

In The Matter Of:

STEPHEN HARRISON COCKBURN

v.

NATIONAL BOARD OF MEDICAL EXAMINERS, ET AL.

STEVEN ZECKER - Vol. 1

December 16, 2010

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EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - - x

STEPHEN HARRISON COCKBURN, :

Plaintiff :

v. : Civil Action

NATIONAL BOARD OF MEDICAL : No. 10-1407

EXAMINERS, et al, :

Defendants :

- - - - - x

Deposition of STEVEN ZECKER

Washington, D.C.

Thursday, December 16, 2010

12:55 p.m.

Job No.: 1-190710

Pages 1 through 147

Reported by: Marilyn Feldman, RPR

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6 801 Pennsylvania Avenue, NW	6 EXHIBITS
7 Suite 500	7 (Retained by counsel.)
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1 APPEARANCES	1 PROCEEDINGS
2 ON BEHALF OF PLAINTIFF:	2 STEVEN ZECKER
3 WAYNE D. STEEDMAN, ESQUIRE	3 having been duly sworn, testified as follows:
4 JIM SILVER, ESQUIRE	4 EXAMINATION BY COUNSEL FOR PLAINTIFFS
5 CALLEGARY & STEEDMAN PA	5 BY MR. STEEDMAN:
6 201 N. Charles Street	6 Q Good afternoon, Dr. Zecker.
7 Suite 1402	7 A Good afternoon.
8 Baltimore, MD 21201	8 Q Glad you could make it here on this snowy
9 410.576.7606	9 afternoon but I guess this is nothing compared to
10	10 what you are used to. Have you ever been deposed
11 ON BEHALF OF DEFENDANTS:	11 previously?
12 CAROLYN M. MEW, ESQUIRE	12 A I have not.
13 FULBRIGHT & JAWORSKI LLP	13 Q I'll just give you some basic information
14 801 Pennsylvania Avenue, NW	14 about it. As you realize, you were just sworn in so
15 Suite 500	15 your testimony is under oath. Think of this almost
16 Washington, D.C. 20004-2623	16 as an extension of the court. Testimony must be
17 202.662.0200	17 honest, to the best of your knowledge and belief,
18	18 and it's under penalty of perjury if there is any
19	19 shading of the truth, so to speak.
20	20 A Yes.
21	21 Q It's certainly less formal being here than
22	22 in court. If you need a break at any time, please

2 (Pages 2 to 5)

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STEVEN ZECKER - 12/16/2010

<p style="text-align: right;">Page 6</p> <p>1 speak up and we'll take a break. If you do not</p> <p>2 understand a question, certainly feel free to ask me</p> <p>3 to clarify or expand or explain my materials, that's</p> <p>4 fine.</p> <p>5 A Um-hmm.</p> <p>6 Q Please try to make all your answers verbal</p> <p>7 as opposed to nods or gestures.</p> <p>8 A Yes.</p> <p>9 Q Is there any reason that you would be</p> <p>10 unable to testify completely and accurately today?</p> <p>11 A No.</p> <p>12 Q Are you under the influence of any</p> <p>13 medication that would affect your cognition or</p> <p>14 memory?</p> <p>15 A No.</p> <p>16 Q You are not under the influence of any</p> <p>17 alcohol or drugs?</p> <p>18 A No.</p> <p>19 Q If you can't hear me -- I have been told</p> <p>20 that my voice starts to fade especially at this time</p> <p>21 of day -- just ask me to speak up.</p> <p>22 A Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 you teach any courses there?</p> <p>2 A Yes, I teach a number of courses.</p> <p>3 Q This current semester, is the semester</p> <p>4 over now?</p> <p>5 A Yes. We are on a quarter system so fall</p> <p>6 quarter just ended.</p> <p>7 Q So the fall quarter that just ended, what</p> <p>8 courses did you teach?</p> <p>9 A I taught two doctoral level seminars and I</p> <p>10 taught a course called Diagnostic Procedures in</p> <p>11 Learning Disabilities, an advanced undergraduate</p> <p>12 master's level class.</p> <p>13 Q You said an advanced undergraduate</p> <p>14 master's?</p> <p>15 A It's junior, senior, and master's.</p> <p>16 Q I see. What were the two doctoral</p> <p>17 seminars, what was the focus?</p> <p>18 A One was a course in which each one of the</p> <p>19 departmental faculty come in and talk about their</p> <p>20 research for one day to expose our first year</p> <p>21 doctoral students to the breadth of work that's</p> <p>22 going on in the department. The other one is for</p>
<p style="text-align: right;">Page 7</p> <p>1 Q I am going to show you a document which we</p> <p>2 will mark as P-13.</p> <p>3 (Deposition Exhibit P-13 was marked for</p> <p>4 identification and was retained by counsel.)</p> <p>5 BY MR. STEEDMAN:</p> <p>6 Q Is that a true and accurate and up-to-date</p> <p>7 copy of your curriculum vitae?</p> <p>8 A Yes, it is, this is the most recent one</p> <p>9 that I have put together.</p> <p>10 Q If we look at the first page, that is your</p> <p>11 name there, Steven Zecker, correct?</p> <p>12 A Yes.</p> <p>13 Q Is that your current professional address?</p> <p>14 A Yes.</p> <p>15 Q That is an accurate address?</p> <p>16 A It is.</p> <p>17 Q Your current titles are associate</p> <p>18 professor of communication sciences and disorders,</p> <p>19 coordinator professional programs and learning</p> <p>20 disabilities. Is that accurate as of today?</p> <p>21 A Yes.</p> <p>22 Q You are at Northwestern University. Do</p>	<p style="text-align: right;">Page 9</p> <p>1 second year doctoral students in which they put</p> <p>2 together a research proposal with the assistance of</p> <p>3 the three faculty members who are in charge of the</p> <p>4 course.</p> <p>5 Q So is it fair to say that both of those</p> <p>6 seminars are focused on research?</p> <p>7 A Yes.</p> <p>8 Q Can you identify any other courses that</p> <p>9 you have taught that relate either specifically or</p> <p>10 generally to learning disabilities?</p> <p>11 A I teach annually a course on -- the title</p> <p>12 is Developmental Disorders of Mathematics -- let me</p> <p>13 look at this, the titles have changed in the last</p> <p>14 couple of years, to make sure of the title. I teach</p> <p>15 annually a course called Attention Deficit Disorder</p> <p>16 and Related Behavior Disorders. I teach annually a</p> <p>17 course Psychoeducational Assessment and Testing</p> <p>18 Principles. I also teach a course Introduction to</p> <p>19 Learning Disabilities, undergraduate course.</p> <p>20 Q Does that pretty much cover it?</p> <p>21 A Yes, and then as needs arise I can be</p> <p>22 asked to teach other courses. I haven't taught it</p>

3 (Pages 6 to 9)

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STEVEN ZECKER - 12/16/2010

<p style="text-align: right;">Page 10</p> <p>1 yet but in the spring I'm going to be teaching a</p> <p>2 course for the first time on translational research.</p> <p>3 Q What does that mean?</p> <p>4 A That means taking research from the lab</p> <p>5 and applying it in the clinic. That will be in the</p> <p>6 spring quarter.</p> <p>7 Q I understand looking at your education</p> <p>8 that you have a bachelor's degree from the</p> <p>9 University of Michigan in sociology and psychology,</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q And then you received a master's degree</p> <p>13 and Ph.D. from Wayne State University in psychology?</p> <p>14 A Correct.</p> <p>15 Q When it says after psychology in parens</p> <p>16 "cognitive processes." What does that refer to?</p> <p>17 A That was the area of concentration within</p> <p>18 the department.</p> <p>19 Q Is that primarily focused on intelligence,</p> <p>20 is that cognitive processes?</p> <p>21 A That is a part of it, but also all of the</p> <p>22 cognitive processes that make up what we would call</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Is that a requirement of Illinois law to</p> <p>2 be licensed to call yourself a psychologist?</p> <p>3 A Yes.</p> <p>4 Q Does that require a Ph.D. or can you get</p> <p>5 licensed with a master's degree?</p> <p>6 A Today I believe it requires a Ph.D.</p> <p>7 Q Do you also have a private practice?</p> <p>8 A I do, yes.</p> <p>9 Q What is the nature of your private</p> <p>10 practice?</p> <p>11 A I see individuals to do diagnostic work</p> <p>12 with a focus on learning disabilities and ADHD.</p> <p>13 Q Would another way of saying that be you do</p> <p>14 assessments to determine learning disabilities?</p> <p>15 A Correct.</p> <p>16 Q Where do your referrals come from?</p> <p>17 A People from the community, word of mouth</p> <p>18 primarily.</p> <p>19 Q Do you have a contract with any</p> <p>20 organization that would send you referrals and ask</p> <p>21 you to do assessments?</p> <p>22 A No.</p>
<p style="text-align: right;">Page 11</p> <p>1 intelligent behavior.</p> <p>2 Q Would learning disabilities be a part of</p> <p>3 that too?</p> <p>4 A It was not a formal part of that program</p> <p>5 but it certainly relates to it. I believe I took</p> <p>6 one course on learning disabilities as a graduate</p> <p>7 student.</p> <p>8 Q How about in the area of attention deficit</p> <p>9 hyperactivity disorders, were there any courses</p> <p>10 specific to that?</p> <p>11 A No. ADHD did not exist at that time, not</p> <p>12 under that name anyway.</p> <p>13 Q Minimal brain dysfunction, is that what</p> <p>14 they called it?</p> <p>15 A Yes, those sorts of things and nothing of</p> <p>16 course was really offered.</p> <p>17 Q It states here you have an Illinois</p> <p>18 registered clinical psychologist certification. Is</p> <p>19 that a license under Illinois law --</p> <p>20 A Yes.</p> <p>21 Q -- to operate as a psychologist?</p> <p>22 A As a clinical psychologist, yes.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q So this is just strictly people from</p> <p>2 within the community come in and --</p> <p>3 A Yes, I have established relationships with</p> <p>4 a couple of private schools who don't have their own</p> <p>5 personnel to do these sorts of things and they</p> <p>6 sometimes refer to me.</p> <p>7 Q I see on page 12 of your CV, if you would</p> <p>8 turn to that, that you have been a disabilities</p> <p>9 consultant for the National Board of Medical</p> <p>10 Examiners since 2003; is that correct?</p> <p>11 A Yes, that is.</p> <p>12 Q Tell me what your duties are as a</p> <p>13 disabilities consultant for NBME.</p> <p>14 A I receive packets of documentation for</p> <p>15 individuals requesting accommodations on the USMLE</p> <p>16 examination and I review them and give my</p> <p>17 professional opinion regarding the validity of the</p> <p>18 claim that the person has a disability.</p> <p>19 Q Approximately how many packets would you</p> <p>20 review in say an average year, typical year?</p> <p>21 A Probably 12 to 15 I would say, little more</p> <p>22 than one a month.</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">Page 14</p> <p>1 Q How did you get involved with NBME? How 2 did you become a disabilities consultant? 3 A In 2003 they had a new person who had come 4 on as the -- what's the title? -- running the 5 program there and they were looking to expand the 6 number of consultants and I was asked to join. 7 Q So they contacted you? 8 A Yes. 9 Q How is it they knew about you? 10 A The person who had taken over in this 11 position knew me from Northwestern, had been at 12 Northwestern. 13 Q The person was the director, 14 coordinator -- 15 A Yes. 16 Q We don't know the exact title but whoever 17 was in charge of it. 18 A Yes. 19 Q That person was from Northwestern you 20 said? 21 A Had attended Northwestern. 22 Q Had attended Northwestern.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q How did they make that request? Would 2 they just send you an e-mail? 3 A Yes. 4 Q You say it asks over this period of time 5 are you able to review packets? 6 A Please indicate any dates during that time 7 that you would be unable to, yes. 8 Q I see that you are also a disabilities 9 consultant for the American Association of Medical 10 Colleges; is that correct? 11 A That's correct. 12 Q What are your duties there? 13 A I do essentially the same thing as I do 14 for the National Board of Medical Examiners except 15 for individuals who are applying for the MCAT, the 16 medical college admissions test. 17 Q So basically the only difference is it's 18 for the MCAT versus the USMLE? 19 A Yes. The individuals applying for the 20 MCAT are either current undergraduates or recent 21 graduates as opposed to med students. 22 Q You have been doing that since 2006?</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes. 2 Q How did you get involved in this 3 particular case, Mr. Cockburn's case? 4 A I was sent the packet of materials and 5 asked to review it and provide my opinion. 6 Q Was there any communication prior to 7 receiving that packet from NBME about Mr. Cockburn? 8 A No. 9 Q How did you receive the packet? Was it by 10 e-mail? 11 A They have a web-based system where I 12 access it and download all the documentation as a 13 PDF and print it out. 14 Q How did they know that you would be able 15 to review this packet? 16 A Do you mean that I would have the time to 17 do it? 18 Q Yes. 19 A They on a quarterly basis or every two 20 months ask about availability, will you be able to 21 review during this period of time, and I had 22 indicated that I could.</p>	<p style="text-align: right;">Page 17</p> <p>1 A Yes. 2 Q How many packets would you review on 3 average in a typical year? 4 A Probably about the same number, maybe a 5 little bit more, probably 15 to 18 on an annual 6 basis since 2006. 7 Q How did you get involved with the American 8 Association of Medical Colleges? 9 A In a similar sort of fashion, an 10 individual had come into the role as director there 11 and was looking to expand the number of consultants. 12 Q So they contacted you? 13 A Correct. He was aware I had been 14 reviewing for the national board and I think they 15 were looking for people with experience. 16 Q Did you know him, this director? 17 A Yes. 18 Q How did you know him? 19 A He ADHD a private practice in the Chicago 20 area prior to taking this job at Northwestern many 21 years ago. 22 Q Getting back to your private practice, I</p>

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<p style="text-align: right;">Page 18</p> <p>1 see you also are on the professional board of 2 advisers for the Hyde Park Day Schools? 3 A Yes. 4 Q Is Hyde Park Day Schools -- I see the 5 plural -- is that more than one school? 6 A They have two campuses, one in the Hyde 7 Park area of Chicago and one in the north suburbs of 8 Chicago. 9 Q What do you do for them? 10 A They are a private school for kids K 11 through 8 with learning disabilities, so I provide 12 advising for them. 13 Q They have two campuses, Hyde Park schools? 14 A Yes. 15 Q All of the kids have learning 16 disabilities? 17 A Yes. 18 Q This is a private school? 19 A Yes. 20 Q How is the tuition paid? Do parents pay 21 or is the -- 22 A In general they have total on the two</p>	<p style="text-align: right;">Page 20</p> <p>1 A Yes, at Hyde Park primarily. Several of 2 the teachers on the staff there are former students 3 of mine. 4 Q Students at Northwestern? 5 A Correct. 6 Q I see you are also on the professional 7 advisory board for Avondale Charter Montessori 8 School. 9 A Yes. 10 Q Is that also a school for children with 11 learning disabilities? 12 A No. That is a public charter school that 13 is just getting off the ground now. 14 Q It is a public charter school that is also 15 a Montessori school? 16 A Yes. 17 Q What are your duties on the professional 18 advisory board there? 19 A It has been largely one of stating support 20 for the concept of a charter Montessori school. It 21 is a competitive process to get a charter school 22 approved and there are probably three or four</p>
<p style="text-align: right;">Page 19</p> <p>1 campuses about 100 kids and I think 80 to 90 of them 2 the parents are paying. The others, about a 3 handful, the local school districts are paying. 4 Q So there are a small number that the 5 public school system is paying for? 6 A Yes. 7 Q Do you ever get involved in the admissions 8 for Hyde Park? 9 A No. 10 Q How often does the board of advisers meet? 11 A Annually. 12 Q Just one time a year? 13 A Yes. 14 Q What is the focus of that meeting? 15 A Sort of directions that the school is 16 thinking of taking and they throw out ideas to the 17 advisers and also publicity-related issues, how can 18 we get the name of the school out there more. 19 Q How is it you got on that board? 20 A I have been involved in some research, 21 ongoing research projects in the school -- 22 Q At Hyde Park?</p>	<p style="text-align: right;">Page 21</p> <p>1 applications for everyone that gets approved, and so 2 I have been playing a role in offering support for 3 the concept and so on. The school has not opened 4 yet. We hope that it will open probably not next 5 year but maybe in 2012. 6 Q You said that in your private practice you 7 do assessments and that people are referred to you. 8 What is the age range of the people that you 9 evaluate? 10 A Lower end, 6 or 7, up to mid 20s 11 primarily. I have seen some older adults but mostly 12 up through college age. 13 Q When people come to you, when they are 14 referred to you, is it with a particular diagnostic 15 question? 16 A For several reasons. Sometimes people 17 need a second opinion. With school age kids there 18 has been some diagnostic work done often in the 19 schools and the parents are interested in knowing 20 whether an independent evaluator would conclude the 21 same things. With the older individual it's often a 22 matter of updating the evaluations so that they can</p>

6 (Pages 18 to 21)

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1 continue to receive accommodations because the shelf
2 life of these evaluations is generally by most
3 schools considered to be three years so they need
4 some updated information.

5 **Q Going back to the second opinions -- you**
6 **talked about the independent evaluation -- does the**
7 **school system ever pay for your second opinion?**

8 A I don't believe that has ever happened,
9 no.

10 **Q So the way this might work out, a possible**
11 **scenario -- and maybe this has actually happened --**
12 **a parent gets an evaluation from the school system,**
13 **they look at it, they agree with the evaluation or**
14 **they just have doubts about the evaluation and so**
15 **they come to you and say we'd like you to give a**
16 **second opinion.**

17 A Yes. Often the school evaluations are not
18 as thorough as perhaps the parents would like.

19 **Q Okay. So does it ever happen that you**
20 **disagree with the findings or conclusions or**
21 **recommendations of the public schools?**

22 A Yes.

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1 **Q How often would you say that happens?**

2 A As a percentage of time?

3 **Q Yes, percentage of evaluations. I know**
4 **it's a tough question.**

5 A It's a difficult question to answer
6 because there are degrees of disagreement. I would
7 say stark disagreement they say one thing and I say
8 the opposite, maybe 20 percent of the time.

9 **Q I know these are tough questions so I**
10 **apologize. How often or what percent, whichever is**
11 **easiest for you to answer, of the times when you do**
12 **these second opinions of school assessments have you**
13 **concluded that a child had a disability when the**
14 **school said the child did not have a disability?**

15 A That is a difficult question to answer. I
16 would relate my experiences -- I also oversee the
17 learning clinic at Northwestern for which the
18 university clinic does essentially the same thing,
19 we keep a database of all of those cases, we use
20 them for research purposes so I know actual numbers
21 there. I can tell you that about 55 percent of all
22 the children that we see there end up with a

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1 diagnosis and that that probably represents,
2 specifically relating to your question, probably
3 about a quarter of the time those diagnoses are
4 inconsistent with the conclusions of the school. So
5 I would guess that mine are similar to that probably
6 in the vicinity of 25 percent of the time.

7 **Q What's happening when you have this**
8 **disagreement? Is the school just not doing a**
9 **thorough evaluation or is it that the school**
10 **personnel did not have the same level of expertise**
11 **as you or the people who are working at the clinic**
12 **have in evaluating students?**

13 A I think some of both. The people who do
14 school evaluations typically do not have the time to
15 devote to the evaluations that someone working
16 privately does. They typically would spend three or
17 four hours total in actual face-to-face time and so
18 as a result often they don't have complete
19 information.

20 It's also the case that different school
21 districts now are adopting different criteria for
22 what constitutes a disability. There are certain

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1 types of children who are included in that, in a
2 particular district's criteria, and others that are
3 excluded, so that often leads to disagreements as
4 well.

5 **Q So what happens when you or let's say the**
6 **clinic that you oversee at Northwestern -- it's**
7 **Northwestern, right?**

8 A Yes.

9 **Q -- finds that a child has a disability**
10 **when the school said no, the child doesn't have a**
11 **disability, what happens?**

12 A Well, typically a school staff meeting
13 would be scheduled and I or other representatives of
14 the evaluation would go and speak with individuals
15 from the school, and often the parents would be
16 there and other school administrators, and try to
17 reach some sort of decision about what's to be done.
18 By law school districts have to consider the
19 evaluation but they don't obviously have to accept
20 the results of evaluation.

21 **Q If they don't accept it, then what**
22 **happens?**

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 A Then it could lead to arbitration where an</p> <p>2 ombudsman sits down with the parties and tries to</p> <p>3 resolve some sort of solution.</p> <p>4 Q Have you ever been involved in anything</p> <p>5 like that, arbitration?</p> <p>6 A Once or twice.</p> <p>7 Q How about in any of the cases that you</p> <p>8 have evaluated or people at the clinic, have they</p> <p>9 ever resulted in any kind of legal action?</p> <p>10 A No.</p> <p>11 Q You have never heard of any of them going</p> <p>12 to what we call a due process here under the IBBA?</p> <p>13 A I was not directly involved but someone</p> <p>14 from our clinic at Northwestern did.</p> <p>15 Q Do you recall what happened?</p> <p>16 A The clinic supervisor for that particular</p> <p>17 clinic went and the parents also brought in an</p> <p>18 attorney to represent them and the school district</p> <p>19 ended up concluding that the individual did have a</p> <p>20 disability and provided appropriate services for</p> <p>21 them.</p> <p>22 Q So when you say the school district</p>	<p style="text-align: right;">Page 28</p> <p>1 clinic and so there are graduate level clinicians</p> <p>2 who are learning to do this so they administer</p> <p>3 probably about half the test. As the quarter moves</p> <p>4 on they take on more and more responsibilities, but</p> <p>5 they are supervised continuously while they are</p> <p>6 doing this.</p> <p>7 Q So I guess these are students who are in</p> <p>8 the clinics who are administering the tests. Are</p> <p>9 these graduate students?</p> <p>10 A Yes, master's and Ph.D. level.</p> <p>11 Q So these master's and Ph.D. level</p> <p>12 students, if they are not doing the administration</p> <p>13 of the tests, who would be doing it?</p> <p>14 A I would be or the clinic supervisor would</p> <p>15 be.</p> <p>16 Q How many assessments in your own private</p> <p>17 practice, not the clinic, in your own private</p> <p>18 practice would you estimate that you do?</p> <p>19 A It has varied. In recent years the</p> <p>20 numbers have been quite lower I think because of the</p> <p>21 economy. In the last two years total I think I have</p> <p>22 only done about seven. Prior to that time I was</p>
<p style="text-align: right;">Page 27</p> <p>1 concluded, did they capitulate before there was a</p> <p>2 legal decision?</p> <p>3 A Yes.</p> <p>4 Q When you do assessments, do you administer</p> <p>5 the tests yourself or do you have someone who works</p> <p>6 for you administer the tests?</p> <p>7 A I always do it myself.</p> <p>8 Q Why is that?</p> <p>9 A Well, I guess I trust myself more than</p> <p>10 anyone else. I think that there is a considerable</p> <p>11 amount of information to be learned from the actual</p> <p>12 interaction that takes place, that's much more than</p> <p>13 a score that emerges from the test that helps</p> <p>14 explain the story. We are talking here about my</p> <p>15 private practice, right?</p> <p>16 Q Yes, yes.</p> <p>17 A Yes.</p> <p>18 Q Is that pretty much the practice in the</p> <p>19 clinic that -- not talking about you doing the</p> <p>20 assessments -- whoever does the assessments in the</p> <p>21 clinic is the person who writes the report?</p> <p>22 A Well, the university clinic is a training</p>	<p style="text-align: right;">Page 29</p> <p>1 typically doing eight to 10 a year.</p> <p>2 Q When you say the last two years, is it a</p> <p>3 total of seven over the last two years?</p> <p>4 A Yes.</p> <p>5 Q A total of three in one year and four over</p> <p>6 another?</p> <p>7 A Yes, it actually was three and four.</p> <p>8 Q How about the clinic, how many assessments</p> <p>9 typically does the clinic do per year that you would</p> <p>10 be involved in?</p> <p>11 A Well, I am involved in all of them in that</p> <p>12 I observe all of them and I review all of them</p> <p>13 before they are sent out. So we have both a school</p> <p>14 aged clinic and there would be about somewhere</p> <p>15 around 50 a year, 50 to 60 a year in that clinic;</p> <p>16 and then an adult clinic that has about 40 a year.</p> <p>17 Q What percentage of the individuals who you</p> <p>18 see, whether it's through your private practice or</p> <p>19 through the clinic, who are seeking an evaluation to</p> <p>20 determine the existence of a disability actually are</p> <p>21 diagnosed with a disability?</p> <p>22 A Slightly more than half.</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 Q Again that was both your private practice 2 and your work at the clinic? 3 A They are similar. 55-60 percent would be 4 a reasonable number. 5 Q Just for clarification, would this be true 6 for someone who has never been diagnosed previously 7 with a disability? 8 A I haven't broken it down in that way. I 9 would presume they are pretty similar but I can't 10 say for sure. 11 Q What would be the oldest person you have 12 diagnosed or maybe the clinic has diagnosed with a 13 learning disability who had previously never been 14 diagnosed with a learning disability? 15 A In their '50s. I couldn't give you an 16 exact age. Somewhere around 55. 17 Q Of the adults who come to see you and come 18 to the clinic, how many of them or what percentage 19 of them would you say have never been diagnosed with 20 a learning disability previously? 21 A Adults only? 22 Q Yes, just talking about the adults.</p>	<p style="text-align: right;">Page 32</p> <p>1 relatively small number than for learning 2 disabilities, probably less than 25 percent. 3 Q Just so I'm clear, this would be somebody 4 who had never had a prior diagnosis but then 5 receives a diagnosis from either you or the clinic 6 of ADHD, about 25 percent would you say? 7 A Yes. 8 Q I am going to hand you another document 9 here, Dr. Zecker which we will mark as P-14. 10 (Deposition Exhibit P-14 was marked for 11 identification and was retained by counsel.) 12 BY MR. STEEDMAN: 13 Q Are you familiar with this document? 14 A Yes, I am. 15 Q Could you identify this document for the 16 record, please? 17 A This is my review of Mr. Cockburn's 18 submitted request for accommodations to the national 19 board last year. 20 Q So if you would just look at the cover 21 page where the top of it says "view results," do you 22 see that?</p>
<p style="text-align: right;">Page 31</p> <p>1 A The majority, probably between half and 2 two-thirds I would say. 3 Q What percentage of them do you conclude 4 have a learning disability? 5 A Generally the numbers are somewhat lower 6 for an individual that age. There may be other 7 explanations, other diagnoses that come out of 8 the -- other than learning disability, things like 9 affective disorder, depression, things like that. 10 So I would say probably somewhere between a quarter 11 and a third. 12 Q An alternative diagnosis would be called a 13 differential diagnosis; is that the correct term? 14 A Yes. 15 Q An alternative diagnosis for a learning 16 disability would be ADHD? 17 A Correct. 18 Q What percentage of the adults either in 19 your clinical or private practice do you see that 20 have been diagnosed with ADHD who have never been 21 diagnosed with ADHD previously? 22 A This is an estimate. I would say it's a</p>	<p style="text-align: right;">Page 33</p> <p>1 A Yes. 2 Q Across the top it says date assigned. Do 3 you see that? 4 A Yes. 5 Q So November 5, 2009, does that sound about 6 accurate -- is that when you received this? 7 A Yes, that would be when they notified me 8 that it was available on the website. 9 Q I see. So you get an e-mail notifying you 10 that it's available and then you go to the website 11 and pull it up? 12 A Yes. I usually do that the same day but I 13 don't in this case know. 14 Q And then the due date, is that a due date 15 that is required by NBME? 16 A They want to turn things around in one 17 week, yes. 18 Q So it's typical that you would have one 19 week to do the review and then write your findings? 20 A Correct. 21 Q Over towards the right in that same line, 22 view docs, what does that refer to?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A This is a little screen shot here that I</p> <p>2 would click on that and that would make available to</p> <p>3 me the PDF.</p> <p>4 Q How about the one that says contact, what</p> <p>5 does that refer to?</p> <p>6 A I have never used that. I don't know.</p> <p>7 Q When it says contact --</p> <p>8 A I assume it has the ability to send an</p> <p>9 e-mail to somebody at the NBME but I have never used</p> <p>10 it.</p> <p>11 Q Has it ever happened that you had one of</p> <p>12 these or you were sent an e-mail saying it's</p> <p>13 available for review and being unable to do a</p> <p>14 review?</p> <p>15 A Yes, once I had indicated availability and</p> <p>16 had a trip, an unscheduled trip that came up and I</p> <p>17 couldn't do it.</p> <p>18 Q Next down says results submitted on</p> <p>19 November 10, 2009.</p> <p>20 A Yes.</p> <p>21 Q So that's when you sent it. If we look</p> <p>22 over to the next page, it says November 8. So did</p>	<p style="text-align: right;">Page 36</p> <p>1 Q So 4-1/2 hours is pretty much the average?</p> <p>2 A I would say.</p> <p>3 Q If we could go to the first page of your</p> <p>4 letter, your letter does not have our numbers, page</p> <p>5 numbers on it so I'll refer you to the numbers that</p> <p>6 are in the lower right-hand corner where it says NBM</p> <p>7 000197 -- I will not say all the zeros but I will</p> <p>8 give you the last three numbers.</p> <p>9 A All right.</p> <p>10 Q The first page, page 197, lists all of the</p> <p>11 documents that you reviewed in preparation to make</p> <p>12 your decision about Mr. Cockburn's request for</p> <p>13 assessment for accommodations; is that correct?</p> <p>14 A Yes, and on to the next page as well.</p> <p>15 Q Is this a complete list of everything that</p> <p>16 you reviewed in the process of making your decision</p> <p>17 and recommendation?</p> <p>18 A That led to this letter, yes.</p> <p>19 Q Did you have contact with anybody, verbal,</p> <p>20 telephonic, e-mail, twitter, smoke signals, with</p> <p>21 anyone about Mr. Cockburn or about this evaluation?</p> <p>22 A No.</p>
<p style="text-align: right;">Page 35</p> <p>1 you actually complete your review and write this</p> <p>2 letter on November 8?</p> <p>3 A Yes.</p> <p>4 Q But you didn't actually send it until</p> <p>5 November 10?</p> <p>6 A Apparently.</p> <p>7 Q Do you know why it took you a couple of</p> <p>8 days to send it after it was complete?</p> <p>9 A I do not. It is not uncommon for me to</p> <p>10 finish one up in the evening and submit it after</p> <p>11 midnight, and their clock is always running on</p> <p>12 eastern time I know, so I commonly submit things at</p> <p>13 midnight or 1:00 o'clock in the morning so it could</p> <p>14 have been the 9th when I was about to submit it.</p> <p>15 Q This case review, looks like it took you</p> <p>16 4-1/2 hours; is that right?</p> <p>17 A Yes.</p> <p>18 Q Is this a typical amount of time, average</p> <p>19 amount of time, it takes you to do one of these</p> <p>20 reviews?</p> <p>21 A Probably. Some just require more to be</p> <p>22 read, more documentation, but that's about typical.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q So the sum total of what you used to make</p> <p>2 your decision is contained in the paragraph that</p> <p>3 starts on the first page, 197, and goes over to page</p> <p>4 198; is that correct?</p> <p>5 A That is correct.</p> <p>6 Q Did you type this letter yourself or did</p> <p>7 someone type it for you?</p> <p>8 A Yes, I typed it myself.</p> <p>9 Q Now you were aware that Mr. Cockburn had</p> <p>10 already requested accommodations through the USMLE</p> <p>11 and had been denied those accommodations, correct,</p> <p>12 at the time you were doing your review?</p> <p>13 A Yes.</p> <p>14 Q Did that in any way influence your</p> <p>15 decision?</p> <p>16 A No.</p> <p>17 Q Do you know who had done the prior</p> <p>18 evaluation?</p> <p>19 A No.</p> <p>20 Q Are you aware as you sit here today who it</p> <p>21 was?</p> <p>22 A Yes.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q Who is that?</p> <p>2 A Dr. Sparks.</p> <p>3 Q Do you know Dr. Sparks?</p> <p>4 A Only through having met him a half a dozen</p> <p>5 times at the annual consultants meeting that the</p> <p>6 national board has. We share a common love of</p> <p>7 college hockey so we talk about that.</p> <p>8 Q Did you see him today? I think you</p> <p>9 overlapped.</p> <p>10 A He came in to pick up his bags.</p> <p>11 Q Did you guys talk at all about this case?</p> <p>12 A No.</p> <p>13 Q Did he tell you anything about his</p> <p>14 deposition today?</p> <p>15 A No.</p> <p>16 Q Did he convey any questions that were</p> <p>17 asked of him?</p> <p>18 A No.</p> <p>19 Q So nothing related to Mr. Cockburn</p> <p>20 whatsoever?</p> <p>21 A Correct.</p> <p>22 Q Or to this case whatsoever?</p>	<p style="text-align: right;">Page 40</p> <p>1 A No.</p> <p>2 Q Did you look up any information about him</p> <p>3 on the Internet for any place else?</p> <p>4 A No.</p> <p>5 Q Any reason that you had to question his</p> <p>6 professional integrity?</p> <p>7 A No.</p> <p>8 Q Any reason to question his professional</p> <p>9 competence --</p> <p>10 A Yes.</p> <p>11 Q -- as an evaluator?</p> <p>12 A No.</p> <p>13 Q When you reviewed the assessments -- you</p> <p>14 have some documents in front of you -- Dr.</p> <p>15 Filipowski's assessments are P-6 and P-7, and you</p> <p>16 can look also at P-8, that's the addendum to his</p> <p>17 2005 assessment.</p> <p>18 A Okay.</p> <p>19 Q Just so we have a clear record, P-6, that</p> <p>20 is the evaluation of Mr. Cockburn conducted by Dr.</p> <p>21 Filipowski in 1998; is that correct?</p> <p>22 A That's right, the original.</p>
<p style="text-align: right;">Page 39</p> <p>1 A Correct. His concern was getting out of</p> <p>2 town with this snow. He had a 1:30 flight.</p> <p>3 Q Prior to seeing him for that brief period</p> <p>4 today, when was the last time you saw Dr. Sparks?</p> <p>5 A It would have been at our last consultants</p> <p>6 meeting just about a year ago I guess in</p> <p>7 Philadelphia. I believe it was held in the first</p> <p>8 week of December of '09.</p> <p>9 Q Some of the information you reviewed are</p> <p>10 evaluations conducted by Dr. Filipowski, correct?</p> <p>11 A Correct.</p> <p>12 Q Prior to receiving the evaluations by Dr.</p> <p>13 Filipowski, did you have any knowledge of Dr.</p> <p>14 Filipowski?</p> <p>15 A I don't believe I had ever reviewed</p> <p>16 anything done by him before, no.</p> <p>17 Q You had never met him previously?</p> <p>18 A No.</p> <p>19 Q Are you aware of his reputation in the</p> <p>20 community?</p> <p>21 A No.</p> <p>22 Q Professional community.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q And then P-7 is the 2005 evaluation of Mr.</p> <p>2 Cockburn by Dr. Filipowski, correct?</p> <p>3 A Yes.</p> <p>4 Q And P-8 is the addendum which is written</p> <p>5 in 2009 but it was the addendum to the 2005</p> <p>6 evaluation conducted by Dr. Filipowski, correct?</p> <p>7 A Correct.</p> <p>8 Q Looking at the second page which is Bates</p> <p>9 no. 198 of your letter --</p> <p>10 A Okay.</p> <p>11 Q -- you mention the evaluations conducted</p> <p>12 by Dr. Filipowski. You also state that he made, Dr.</p> <p>13 Filipowski made no diagnosis of a reading disorder</p> <p>14 in 1998 but that he did in 2005. Do you know what</p> <p>15 Dr. Filipowski did differently in 2005, if he did</p> <p>16 anything differently in 2005, compared to 1998?</p> <p>17 A There were some different tests that he</p> <p>18 administered.</p> <p>19 Q What tests were those?</p> <p>20 A He had not administered -- well, he in</p> <p>21 fact did not administer any of the achievement tests</p> <p>22 in the '98 evaluation. Apparently someone at Mr.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Cockburn's school had done those. In '05 he 2 administered all of those tests from the 3 Woodcock-Johnson plus the Nelson-Denny tests that he 4 had administered as well. 5 Q So in 1998 -- you note the year in your 6 letter -- he used the Woodcock-Johnson revised 7 edition, correct? 8 A Yes. 9 Q And the Woodcock-Johnson revised differed 10 from the Woodcock-Johnson III in what way? 11 A The primary difference -- well, a couple 12 of differences. One is that the normative sample 13 used to derive the scores was updated reflecting 14 changing demographics and so on, and the tests 15 themselves, some of them remained the same, some 16 were modified, some were added. There were more 17 tests on the Woodcock-Johnson III than there were on 18 the revised. 19 Q Does the Woodcock-Johnson III give more 20 information regarding an individual's learning 21 ability or disability than the Woodcock-Johnson 22 revised?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q So Dr. Filipowski does not diagnose Mr. 2 Cockburn with a reading disability in 1998 but he 3 does in 2005. What did he rely on in making his 4 determination of the reading disability in 2005? 5 A My interpretation of what he relied on, he 6 speaks about two different sets of criteria that he 7 used, one being discrepancy approach and one being 8 the criteria for reading disorder under DSM-IV. So 9 with regard to the discrepancy, he was looking for a 10 significant discrepancy between intelligence and 11 achievement with the measures of reading that he had 12 administered. 13 Q I believe you were somewhat critical of 14 the discrepancy at first; is that correct? 15 A It is not considered appropriate for use 16 with adults. 17 Q Okay. Is it considered appropriate for 18 use with younger children? 19 A Generally yes. Different states have 20 different guidelines on that, but the discrepancy 21 approach has been the method used for several 22 decades.</p>
<p style="text-align: right;">Page 43</p> <p>1 A It has more tests so it has -- I guess it 2 could be said that it had the potential to do that 3 if you were to administer it, yes, it gives you more 4 information. 5 Q Are there more required tests -- when I 6 say required, I understand that there are certain 7 clusters like a reading cluster, a math cluster, a 8 writing cluster -- are there more tests required to 9 get those cluster scores or I think what's referred 10 to as broad reading or broad math or -- 11 A There are more clusters available, but the 12 tests that make up the clusters are pretty much the 13 same. 14 Q So the subtests that made up the broad 15 reading for the Woodcock-Johnson-R versus the 16 Woodcock-Johnson III are the same, they didn't 17 change? 18 A I'm not certain about the actual makeup of 19 those cluster scores. 20 Q Okay. 21 A I believe the majority of them are the 22 same. I'm not sure they are actually overlapping.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q Why is it okay for kids but not adults? 2 A Differing laws apply. The IDEA, 3 Individuals With Disabilities Act, uses a definition 4 that simply refers to discrepancy as opposed to for 5 adults the Americans With Disabilities Act as 6 amended does not speak to a discrepancy. A person 7 can have a discrepancy with ADA but yet not be 8 considered disabled because of the additional 9 requirement of a substantial impairment relative to 10 the average person. That's a different criteria. 11 Q When you talk about a substantial 12 limitation compared to the average person, how do 13 you define that? 14 A I define it as below the average range for 15 individuals of the same age from the general 16 population presumably from the normative sample of 17 that test, if we are talking about a specific test. 18 Q So below the average range of individuals 19 for the same age. I think you said something else 20 and I'm not sure what -- 21 A For that specific test, the relative 22 normative sample for the relevant test.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q Okay. So when we talk about the average 2 range, what are we talking about in terms of 3 percentiles? 4 A Below the 25th percentile. 5 Q You mentioned the ADA so my assumption is 6 that if you looked at the ADA you would have a sense 7 of what the ADA says. Is it identified anywhere in 8 the ADA with regard to this requirement that someone 9 be below the 25th percentile in order to be 10 considered substantially limited compared to most 11 people? 12 A The ADA itself, I don't believe I say 13 that, no. 14 Q So where do you derive that? 15 A From various court decisions that have 16 affirmed that definition of average. 17 Q Is there any decision that you can 18 particularly point to? 19 A There are several I think that have used 20 the average person criterion. 21 Q But have any used the 25th percentile? 22 That's what I am asking.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q In Dr. Filipowski's report, he said that 2 the comprehension was at about the 6th percentile in 3 his 2005 report; is that correct? 4 A Yes. 5 Q So tell me how you get from 6th percentile 6 to close to the middle of the average range, which 7 would be close to 50 percent, to the 5th 8 percentile -- is that correct? 9 A Yes. 10 Q How did you get that? 11 A The Nelson-Denny is an unusual test in 12 that it only has grade based norms available for it 13 but there are no age based norms. So Dr. Filipowski 14 here indicates that he was basing his scoring on the 15 final semester college seniors and that's what led 16 to the 6th percentile score. 17 The scaled scores are based on the entire 18 standardization sample for the Nelson-Denny and as 19 such is more representative of the general 20 population. The sample that was used by Dr. 21 Filipowski is the highest educated group possible to 22 score it against.</p>
<p style="text-align: right;">Page 47</p> <p>1 A I can't cite a particular legal case. 2 Q Okay. I mean do you recall if there was a 3 case where the 25th percentile was actually 4 identified as the cutoff for the most people 5 requirement? 6 A I believe that that was the case, yes. 7 Q So there was a case but you don't recall 8 what it was at this point? 9 A That's right. 10 Q If someone is below the 25th percentile in 11 certain parts of the standardized test but not 12 others -- well, let's go to what we have here with 13 Stephen. We know that on the reading fluency of the 14 Woodcock-Johnson he was below the 25th percentile. 15 Would you agree with that? 16 A Yes. 17 Q On the Nelson-Denny reading test, I 18 believe you actually said that you thought he was 19 close to the middle of the average range in 20 comprehension; is that correct? 21 A In the 2005, yes. Yes, based on the 22 addendum that was provided.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q The scaled score is based upon the entire 2 universe of individuals who took the Nelson-Denny? 3 A Yes, individuals ranging from I believe 4 age 17 up through into adulthood. 5 Q And that scaled score, when you look at 6 the Nelson-Denny reading test manual, does it have a 7 percentile attached to the scaled score? 8 A No. 9 Q How did you figure that that scaled score 10 was close to the middle of the average range? 11 A All of these scaled scores have an average 12 of 200 and a standard deviation of 25, so the 13 reported score of 194 would be within one quarter of 14 a standard deviation of average so that would -- you 15 can't make a direct translation there but it would 16 be at about the 40th to 45th percentile presumably. 17 Q And you said that the Nelson-Denny is not 18 based on age norms but it's on grade norms. What 19 would be the lowest grade that it would be based on? 20 A High school juniors. 21 Q High school juniors? 22 A Yes.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q 11th graders?</p> <p>2 A Yes.</p> <p>3 Q Would it be accurate to say that anyone</p> <p>4 taking this test getting the scaled scores that Dr.</p> <p>5 Filipowski came up with would be in the same</p> <p>6 percentile?</p> <p>7 A You are asking if an identical score</p> <p>8 between two individuals would be the same scaled</p> <p>9 score? Correct.</p> <p>10 Q Regardless of their age and grade.</p> <p>11 A Yes, correct.</p> <p>12 Q And anyone with a raw score the same as</p> <p>13 what Dr. Filipowski obtained for Mr. Cockburn on</p> <p>14 comprehension -- we'll talk about that one -- that</p> <p>15 person, regardless of what grade they are in, would</p> <p>16 have the same scaled score as what Mr. Cockburn had?</p> <p>17 A Yes, there is a direct relationship</p> <p>18 between the raw items, the number of items correct</p> <p>19 on the test and the scaled score of the individual.</p> <p>20 Q Now that's not typically the way standard</p> <p>21 scores, scaled scores percentiles are obtained, are</p> <p>22 they? I mean aren't they typically based on age,</p>	<p style="text-align: right;">Page 52</p> <p>1 reputations?</p> <p>2 A No. I have heard Dr. Culotta's name</p> <p>3 mentioned but never met him.</p> <p>4 Q Don't know in what context you heard it?</p> <p>5 A No.</p> <p>6 Q Do you have any information that would</p> <p>7 cause you to question Dr. Culotta's integrity?</p> <p>8 A No.</p> <p>9 Q Or his competence?</p> <p>10 A No.</p> <p>11 Q If we look at the scores without going</p> <p>12 through the whole test right now, were there any</p> <p>13 scores in this evaluation that you thought were</p> <p>14 inaccurate?</p> <p>15 A No.</p> <p>16 Q Now I will point out one mistake that Dr.</p> <p>17 Culotta actually identified in his deposition on</p> <p>18 Tuesday. If you would turn to page 12 -- look at</p> <p>19 the numbers at the top -- there are some numbers at</p> <p>20 the bottom, handwritten numbers. At the very</p> <p>21 bottom, do you see where it has the Nelson-Denny</p> <p>22 reading test?</p>
<p style="text-align: right;">Page 51</p> <p>1 grade, things like that?</p> <p>2 A Yes.</p> <p>3 Q So the Nelson-Denny is a little bit odd in</p> <p>4 that regard?</p> <p>5 A Yes, the Nelson-Denny is -- well, it was</p> <p>6 never initially intended to be a diagnostic test and</p> <p>7 it's also fairly dated so they were using some</p> <p>8 different guidelines I think at that time.</p> <p>9 Q Take a look if you would at the</p> <p>10 neuropsychological evaluation conducted by Dr.</p> <p>11 Culotta. I believe that is on P-14 in your</p> <p>12 documents there -- I'm sorry, P-12.</p> <p>13 A Yes.</p> <p>14 Q So this was another document that you</p> <p>15 reviewed as part of your review of Stephen</p> <p>16 Cockburn's request for accommodations, correct?</p> <p>17 A Yes.</p> <p>18 Q With regard to Dr. Culotta and there is</p> <p>19 another person, Susan Paresky, are you familiar with</p> <p>20 either of those individuals?</p> <p>21 A No.</p> <p>22 Q Do you know anything about either of their</p>	<p style="text-align: right;">Page 53</p> <p>1 A Yes.</p> <p>2 Q And the reading rate --</p> <p>3 A Standard score, yes. Should be 175.</p> <p>4 Q Exactly, okay.</p> <p>5 A That's right.</p> <p>6 Q I didn't want to trick you into anything,</p> <p>7 I know you said you didn't disagree with anything --</p> <p>8 A You are right, and his interpretation of</p> <p>9 it later I think is influenced by that too, he made</p> <p>10 some statement about it being more than 5 standard</p> <p>11 deviations below the mean and evaluations and as 75</p> <p>12 it would be but as 175 it would not be.</p> <p>13 Q Let's look at the first page of Dr.</p> <p>14 Culotta's report. In terms of the procedures that</p> <p>15 he employed there -- before I ask you, let me first</p> <p>16 ask you, what is the difference between a</p> <p>17 neuropsychological evaluation and a psychological</p> <p>18 evaluation?</p> <p>19 A Neuropsychologists tend to use a lot of</p> <p>20 the same instruments that are used in the</p> <p>21 psychological evaluation. They also rely on</p> <p>22 so-called neuropsychological tests that are</p>

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<p style="text-align: right;">Page 54</p> <p>1 presumably tapping specific skills associated with 2 various neural processes, underlying neural 3 processes. 4 Q So what would be the difference between a 5 neuropsychologist and a psychologist? 6 A Largely their training and their exposure 7 to these sorts of tools and their tendency to 8 interpret results from that sort of perspective. 9 Q Is it accurate to say that a 10 neuropsychologist has more intensive training in the 11 functioning of the brain than a psychologist? 12 A Can you restate that? Did they have 13 what -- 14 Q More training, more intensive training. 15 A Different training. The field of 16 neuropsychology grew out of individuals with brain 17 damage, so people who have had traumatic brain 18 injury -- acquired sort of cases and has over the 19 years evolved into looking as well at developmental 20 cases. So they have a different perspective on it. 21 I don't know that I would say it's more extensive. 22 More extensive with regard to certain measures,</p>	<p style="text-align: right;">Page 56</p> <p>1 classify yourself? 2 A Clinical psychologist. 3 Q Would somebody who is a board-certified 4 psychologist be somebody who is at a higher level of 5 training? 6 A Not necessarily. Than someone without? 7 Q Yes. 8 A Perhaps. I don't think in all cases that 9 that would be the case. 10 Q What would be the benefit of being 11 board-certified as opposed to not being 12 board-certified? 13 A I think having an additional credential 14 just makes you more appealing to other people, it 15 carries with it certain assurances of your training. 16 Q Okay. Let's go back to the first page of 17 Dr. Culotta's report. Under the procedures there 18 are a number that are listed there. Can you tell me 19 how many of these or which of these you have 20 received training on, training to the extent that 21 you would be able to administer? 22 A Wechsler Adult Intelligence Scale,</p>
<p style="text-align: right;">Page 55</p> <p>1 perhaps less so with regard to others. 2 Q What does it mean to be board-certified? 3 A Referring to Dr. Culotta's qualifications 4 here, that he has met professional requirements to 5 be certified by a national accreditation board. 6 Q As a neuropsychologist? 7 A Yes, and I presume -- I don't know his 8 training but I would presume his training included 9 neuropsychological training that allowed him to get 10 that certification. 11 Q Is there something similar for 12 psychologists, a board certification for 13 psychologists? 14 A There is in various areas, forensic 15 psychology and so on, and a clinical psychologist 16 can become board-certified as a neuropsychologist 17 with appropriate training and experience as well. 18 Q They would need additional training? 19 A Yes. 20 Q Are you board-certified? 21 A No. 22 Q What kind of psychologist would you</p>	<p style="text-align: right;">Page 57</p> <p>1 Woodcock-Johnson, Nelson-Denny. I have not done -- 2 well, Lateral Dominance Examination is not a formal 3 test, it's sort of an informal measure. 4 Q Have you ever used it? 5 A Yes. I mean there are variations, 6 different ones out there. I have never done the 7 grooved pegboard. Rey complex figure, yes. 8 California verbal test, yes. Category fluency test, 9 no. Controlled oral word association test, no. 10 Trailmaking, yes. Wechsler Memory Scale, yes. 11 Stroop, yes. Paced auditory serialization test I 12 have used occasionally. And all the others, yes. 13 Q What did you say about the paced auditory 14 serial? 15 A That I have had some exposure to it but 16 it's not something that I ever use. 17 Q Have you ever used it? 18 A A couple of times, yes. 19 Q Then the Barclay's ADHD symptoms 20 checklist? 21 A Yes. 22 Q And the Beck depression inventory?</p>

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<p>1 A Yes.</p> <p>2 Q Have you ever used all of these together</p> <p>3 in the way Dr. Culotta did to formulate a diagnostic</p> <p>4 impression of someone?</p> <p>5 A All of these meaning all of these that he</p> <p>6 used here?</p> <p>7 Q Yes.</p> <p>8 A No, because I don't use all of them.</p> <p>9 Q Setting the ones aside that you don't use,</p> <p>10 the ones that you have used --</p> <p>11 A Um-hmm.</p> <p>12 Q -- have you ever completed a battery of</p> <p>13 tests that included again all the ones that you have</p> <p>14 used for one child, have you ever done that the way</p> <p>15 Dr. Culotta did here?</p> <p>16 A Probably. I hedge that because I have a</p> <p>17 large battery of things that I can use. There are</p> <p>18 some that sort of form the core that I use with</p> <p>19 pretty much everyone and others that I pull in as</p> <p>20 needed. I can't say for sure that I have used every</p> <p>21 single one on the same individual.</p> <p>22 Q So why would someone administer all of</p>	<p>1 of these neuropsych measures here are common ones</p> <p>2 administered by many if the not most</p> <p>3 neuropsychologists.</p> <p>4 Q You don't know how Dr. Culotta goes about</p> <p>5 determining what battery of assessments to</p> <p>6 administer for a specific individual?</p> <p>7 A I do not.</p> <p>8 Q Are you aware that Dr. Culotta did not</p> <p>9 administer the majority of these, that they were</p> <p>10 administered by his psychology associate, that they</p> <p>11 are administered by her?</p> <p>12 A It was not stated. I assume that that's</p> <p>13 the case. That usually is the case when you have a</p> <p>14 situation like this.</p> <p>15 Q Is that common practice to have a</p> <p>16 psychology associate or somebody of that caliber to</p> <p>17 administer the test rather than the</p> <p>18 neuropsychologist themselves?</p> <p>19 A It's not unusual.</p> <p>20 Q Is there any problem with doing it that</p> <p>21 way?</p> <p>22 A It introduces the potential for quality</p>
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<p>1 these assessments, setting aside the ones that you</p> <p>2 have not administered? Do you still have</p> <p>3 familiarity with them?</p> <p>4 A Yes.</p> <p>5 Q Familiarity meaning you are able to look</p> <p>6 at them and interpret them and understand the</p> <p>7 purpose and the meaning of them?</p> <p>8 A Yes.</p> <p>9 Q You would be able to interpret them?</p> <p>10 A Yes.</p> <p>11 Q So why would someone administer this</p> <p>12 fairly large battery of tests -- you would agree</p> <p>13 it's a large battery?</p> <p>14 A Reasonably large.</p> <p>15 Q -- fairly large battery of tests to one</p> <p>16 individual?</p> <p>17 MS. MEW: Objection but you can answer. I</p> <p>18 was just objecting to form.</p> <p>19 A Well, I don't know what his motivation was</p> <p>20 for doing this. Many practitioners have sort of a</p> <p>21 standard battery, most of which they administer to</p> <p>22 most people, and that could well be the case. Most</p>	<p>1 control concerns. In any particular case there is a</p> <p>2 possibility of that. You are relying on the</p> <p>3 competence of the in this case associate. The</p> <p>4 extent to which that person is supervised would</p> <p>5 probably determine whether it should be a concern or</p> <p>6 not.</p> <p>7 Q Have you ever heard of a neuropsychologist</p> <p>8 who used a psychology associate having problems in</p> <p>9 terms of the accuracy of the information obtained by</p> <p>10 the psychology associate?</p> <p>11 A A specific instance?</p> <p>12 Q Yes.</p> <p>13 A Not that I can recall.</p> <p>14 Q Do you know what the American</p> <p>15 Psychological Association says about the use of</p> <p>16 psychology associates in the administration of</p> <p>17 tests?</p> <p>18 A Well, I believe it just states that they</p> <p>19 need to have sufficient training and they have to</p> <p>20 have appropriate supervision.</p> <p>21 Q You don't know whether the American</p> <p>22 Psychological Association has said you shouldn't use</p>

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<p style="text-align: right;">Page 62</p> <p>1 psychology associates, you should do it yourself?</p> <p>2 A I don't know that.</p> <p>3 Q Let's turn to page 11 and again look at</p> <p>4 the numbers at the top. It's confusing, those</p> <p>5 numbers are different than those at the bottom.</p> <p>6 A Okay.</p> <p>7 Q Here on this page we have the</p> <p>8 Woodcock-Johnson III normative update test of</p> <p>9 achievement. Do you know what that means, normative</p> <p>10 update?</p> <p>11 A Yes, the Woodcock-Johnson III originally</p> <p>12 came out -- I am estimating here -- in the early</p> <p>13 1990s and as a test ages, the norms become outdated,</p> <p>14 and so without changing any of the tests themselves,</p> <p>15 they provided an update to the norms some years</p> <p>16 after the original test was released. Some of the</p> <p>17 test stayed the same but the normative sample</p> <p>18 changed.</p> <p>19 Q So if we look at these scores -- I guess</p> <p>20 if we go across the top, it has SS. What does that</p> <p>21 stand for?</p> <p>22 A Standard score.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q So all of the fluency tests?</p> <p>2 A Yes.</p> <p>3 Q If we go down to the table of subtest</p> <p>4 scores, you see under reading fluency 12th</p> <p>5 percentile?</p> <p>6 A Um-hmm.</p> <p>7 Q So that would be below average?</p> <p>8 A Um-hmm.</p> <p>9 Q We have to the right staying on that same</p> <p>10 line an age equivalent. The 10:6, what does that</p> <p>11 mean?</p> <p>12 A 10 years 6 months.</p> <p>13 Q How about the GE, grade equivalent?</p> <p>14 A First 10th of 5th grade.</p> <p>15 Q First 10th of 5th grade?</p> <p>16 A They divide the calendar year into tenths</p> <p>17 rather than months.</p> <p>18 Q Okay. Do you remember what Mr. Cockburn's</p> <p>19 educational status was at the time he was evaluated?</p> <p>20 A He was a college graduate.</p> <p>21 Q Keep your finger on that page but look</p> <p>22 back at the front page. Do you see the identifying</p>
<p style="text-align: right;">Page 63</p> <p>1 Q And the next one is percentile, correct?</p> <p>2 A Yes.</p> <p>3 Q What is the AE?</p> <p>4 A Age equivalent.</p> <p>5 Q And GE?</p> <p>6 A Grade equivalent.</p> <p>7 Q If we look down the percentiles, I believe</p> <p>8 that it was your statement earlier that you would</p> <p>9 consider someone having a disability if they fell</p> <p>10 below the 25th percentile and I'm not going to hold</p> <p>11 you to any particular subtext but in general --</p> <p>12 A I look for those sorts of scores, yes.</p> <p>13 Q So if we look down here, the scores that</p> <p>14 we find below the 25 percentile, looks like the</p> <p>15 first one in the upper table is academic fluency.</p> <p>16 Is that correct?</p> <p>17 A That's correct.</p> <p>18 Q What does academic fluency test?</p> <p>19 A That is a cluster score meaning that it is</p> <p>20 a score that is obtained by to some extent averaging</p> <p>21 the scores on three different tests, the reading</p> <p>22 fluency, math fluency, and writing fluency tests.</p>	<p style="text-align: right;">Page 65</p> <p>1 information at the very top? It has his name, date</p> <p>2 of birth, and then you come down to education.</p> <p>3 A Yes.</p> <p>4 Q So he was second year in medical school?</p> <p>5 A In medical school, yes.</p> <p>6 Q Would you think that it would be difficult</p> <p>7 for an individual who is in his second year of</p> <p>8 medical school to be successful if that person is</p> <p>9 reading at a 5th grade level?</p> <p>10 MS. MEW: Object to form. You may answer.</p> <p>11 MR. STEEDMAN: I'll rephrase. That's a</p> <p>12 terrible question.</p> <p>13 BY MR. STEEDMAN:</p> <p>14 Q What would you expect of someone who is</p> <p>15 reading at a grade equivalent of 5.1 with regard to</p> <p>16 how they would do in medical school?</p> <p>17 A That question is dependent on what it</p> <p>18 means to have a grade equivalent of 5.1. Most</p> <p>19 practitioners are told to avoid the use of age and</p> <p>20 grade equivalents to describe performance because</p> <p>21 they can be misleading. What this means is that his</p> <p>22 raw score on that measure was equal to that of</p>

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<p style="text-align: right;">Page 66</p> <p>1 average fifth graders. So it's a subtle difference 2 but it would suggest that on this particular test 3 that his reading was below that of other that which 4 would be associated with medical students. 5 Q When we talk about reading fluency, are we 6 only talking about the speed with which somebody 7 reads? 8 A This particular test is to some extent 9 also measuring accuracy because the test consists of 10 a series of short sentences, very simple sentences, 11 and Mr. Cockburn had to agree yes or no whether each 12 statement was correct. The raw score for that test 13 that leads to this is the number correct minus the 14 number incorrect. So someone who makes a number of 15 errors on the test would have their score pulled 16 down as well. 17 Q So help me understand how this subtest is 18 administered. Is he asked to read something aloud? 19 A No. This is done entirely in silent 20 reading. 21 Q So he reads something and then he has 22 questions about whatever it is he read?</p>	<p style="text-align: right;">Page 68</p> <p>1 look at the broad reading score, what test comprised 2 the broad reading score? 3 A I am not certain on this. Certainly 4 letter word identification does, passage 5 comprehension, word attack, and I believe reading 6 fluency as well. 7 Q So that broad reading score, the only 8 timed test in that cluster would be reading fluency? 9 A Yes. 10 Q Okay. 11 A If my interpretation is correct, yes. 12 (Brief recess 2:23-2:33 p.m.) 13 BY MR. STEEDMAN: 14 Q So I am going to keep you focused, if you 15 will, on Dr. Culotta's report, which is P-12. If 16 you would turn to page 13 and look at the upper 17 numbers -- I'm sorry, go back to page 12. Down at 18 the bottom is the Nelson-Denny table which we have 19 looked at already. 20 A Yes. 21 Q In terms of the percentiles that Dr. 22 Culotta has written in this table, comprehension was</p>
<p style="text-align: right;">Page 67</p> <p>1 A Each question there is a question 2 following the sentence and the sentences are very 3 transparent in terms of in terms of their 4 truthfulness or falsity. Things like all cows have 5 three legs, yes, no, and that's the nature of the 6 task. So there is a comprehension component to it 7 but it's fairly minimal. 8 Q And this is a timed test? 9 A Yes, 3 minutes. 10 Q 3 minutes, okay. Are all the fluency 11 tests timed? 12 A Yes. 13 Q How about the ones that are not fluency 14 tests, are they timed as well? Like the subtest 15 letter word identification, is that timed test? 16 A That is not. 17 Q How about passage comprehension, is that a 18 timed test? 19 A No. 20 Q Word attack, is that a timed test? 21 A No. 22 Q So going up to the cluster stores when we</p>	<p style="text-align: right;">Page 69</p> <p>1 at the 3rd percentile, correct? 2 A Yes. 3 Q According to his table. And the extended 4 time administration was at the 9th percentile? 5 A Yes. 6 Q What does that refer to, the extended time 7 administration? 8 A The test has a 20-minute time limit and if 9 so desired you can also allow the individual to have 10 60 percent additional time which is considered the 11 extended time, so 32 minute administration. 12 Q I see. Just looking at the difference 13 between the scores that are listed here, let me ask 14 you, are you comparing apples to apples when you 15 compare the comprehension raw score to the extended 16 time administration or are they different? 17 A It is the same test. 18 Q So how significant is that change in 19 scores? 20 A The raw score on this test is actually the 21 number of correct answers multiplied by 2. So it 22 tells me that under the 20 minute administration he</p>

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<p>1 was able to correctly answer 17 and I believe it was 2 17 out of the 18 that he had attempted, because I 3 have seen the actual protocol on which this was 4 scored and on the extended time it indicates that he 5 got 29 correct, I believe it was 29 out of 31 6 correct.</p> <p>7 Q Well, is there a ceiling as to the number 8 that you can attempt? I assume there must be.</p> <p>9 A Yes, there is I believe 36 items.</p> <p>10 Q Did he attempt 31?</p> <p>11 A He did not finish the whole test, no, 12 there were some that he did not finish.</p> <p>13 Q So on the protocol you saw you think he 14 got it up to 31, he didn't make it to 36?</p> <p>15 A Correct.</p> <p>16 Q So when we compare the percentiles, he 17 went from the 3rd percentile to the 9th percentile. 18 Is that a fairly significant jump or not?</p> <p>19 A No.</p> <p>20 Q All right.</p> <p>21 A Most people do not finish this test so 22 most everyone when given extended time will get more</p>	<p>1 Q I mean the first percentile would be more 2 than 2 standard deviations below the mean?</p> <p>3 A Yes.</p> <p>4 Q But you disagree with using college 5 seniors or graduates as a normative sample to 6 compare Mr. Cockburn to, correct?</p> <p>7 A Yes.</p> <p>8 Q You think he should be compared to the 9 whole group upon which the scaled scores -- well, 10 are scaled scores normed?</p> <p>11 A Yes.</p> <p>12 Q So you believe that those percentiles 13 should reflect the scaled scores which are 14 reflective of the norms of the entire group 15 regardless of grade level or age; is that correct?</p> <p>16 A I think that given the nature of the 17 Nelson-Denny and that it really does not have the 18 norms that we would like to use, that that's the 19 best that we can do to use the scaled score.</p> <p>20 Q Okay. If we go back to your letter -- it 21 will be Bates no. 200 if you look at the bottom 22 right-hand corner, it's the fourth page of your</p>
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<p>1 correct. It's basically saying he has maintained 2 his relative position.</p> <p>3 Q On the reading rate, 137 wpm means words 4 per minute?</p> <p>5 A Correct.</p> <p>6 Q And there, according to Dr. Culotta's 7 assessment, he was at the first percentile and we 8 know the standard score should be 175 instead of 75, 9 correct?</p> <p>10 A Yes.</p> <p>11 Q So if we look at these percentiles, if 12 these percentiles were accurate, and I know you are 13 challenging the accuracy of them, if these 14 percentiles were accurate -- well, let me come back 15 to that. These percentiles are accurately compared 16 to individuals who are seniors or college graduates, 17 correct?</p> <p>18 A Yes.</p> <p>19 Q And compared to seniors or college 20 graduates, Mr. Cockburn scored fairly significantly 21 below average, would you agree?</p> <p>22 A Compared to that comparison group, yes.</p>	<p>1 letter -- you talk about the ADHD diagnosis maybe 2 halfway down or so --</p> <p>3 A Yes.</p> <p>4 Q -- and you state that, and this is a 5 little bit further than halfway down, you concur 6 with a number of the comments that were made about 7 problems with attentiveness, disorganization, 8 failure to complete assignments, yet the 9 difficulties Mr. Cockburn was having were apparently 10 never considered severe enough to warrant screening 11 or evaluation. What is the significance of that, of 12 that statement, the fact that it was never quote 13 severe enough to warrant a screening or evaluation?</p> <p>14 A One of the criteria for the diagnosis of 15 ADHD is that there be an onset before the age of 7 16 years, so there has to be some demonstration that 17 there was an impairment of functioning at that 18 level, at that age level. And the fact that -- so 19 it does appear that at least around the age of 7 20 teachers were making some of these comments, but my 21 interpretation was that in their perspective these 22 problems were not sufficient to be impacting his</p>

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<p style="text-align: right;">Page 74</p> <p>1 school performance in a way that would have led to</p> <p>2 someone saying let's evaluate him and see what's</p> <p>3 going on.</p> <p>4 Q You did review the school records that</p> <p>5 were submitted? There were teacher comments</p> <p>6 starting with kindergarten and going up through 5th</p> <p>7 grade, since that was elementary school.</p> <p>8 A Yes.</p> <p>9 Q Were there any comments in there that you</p> <p>10 thought should have been a trigger for an evaluation</p> <p>11 to see -- or a screening to see whether or not he</p> <p>12 was a child with ADHD?</p> <p>13 A It's not -- not knowing how severe they</p> <p>14 felt these problems were, how frequently they</p> <p>15 occurred and so on, it's difficult to say. I did</p> <p>16 notice that across teachers and across years there</p> <p>17 were times when it seemed to be a problem and times</p> <p>18 when it seemed not to be a problem and I presume</p> <p>19 that that was interpreted as this is not pervasive,</p> <p>20 it indicates an area of weakness but not a pervasive</p> <p>21 problem.</p> <p>22 Q So if a teacher writes a comment like</p>	<p style="text-align: right;">Page 76</p> <p>1 evaluation --</p> <p>2 A They would likely not do it themselves,</p> <p>3 they would recommend to the parents that an</p> <p>4 evaluation be obtained.</p> <p>5 Q And the person most likely to do that type</p> <p>6 of evaluation would be what professional?</p> <p>7 A An outside evaluation?</p> <p>8 Q Yes.</p> <p>9 A Could be family physician, pediatrician,</p> <p>10 clinical psychologist, neuropsychologist, school</p> <p>11 psychologist. They all are considered appropriate</p> <p>12 evaluators.</p> <p>13 Q If the school considers it a medical</p> <p>14 issue, they would most likely refer them to a person</p> <p>15 who had medical training?</p> <p>16 A It would depend on their orientation. If</p> <p>17 they thought that medicating kids was the generally</p> <p>18 appropriate intervention, then they would probably</p> <p>19 refer to somebody in the medical profession. If</p> <p>20 they think it is more of a behavioral or</p> <p>21 psychological problem, they would refer to a</p> <p>22 psychologist or neuropsychologist.</p>
<p style="text-align: right;">Page 75</p> <p>1 she's worried about his inattentiveness, his</p> <p>2 daydreaming, she's very worried about him, would</p> <p>3 that indicate to you or not that the behavior is</p> <p>4 severe enough to warrant a screening?</p> <p>5 A Usually screenings are initiated by</p> <p>6 teachers, so I guess I would say it's possible that</p> <p>7 that could indicate that, but in this particular</p> <p>8 indication it appears not to have happened.</p> <p>9 Q If a teacher recommends an evaluation, a</p> <p>10 teacher in a public school recommends an evaluation</p> <p>11 for a student, what is the school system's</p> <p>12 obligation?</p> <p>13 A The evaluation -- some school districts --</p> <p>14 it would depend on the school district I guess, I</p> <p>15 can't make a blanket statement. There are some</p> <p>16 school districts that consider ADHD to be a medical</p> <p>17 disorder rather than an educational disorder so they</p> <p>18 have a different set of procedures that they would</p> <p>19 follow.</p> <p>20 Q So a school district that might consider</p> <p>21 ADHD a medical disorder would likely not recommend a</p> <p>22 screening, an educational screening or an</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Is daydreaming an indicator of ADHD?</p> <p>2 A Could be.</p> <p>3 Q Inattentiveness?</p> <p>4 A Could be, it's one of the criterion.</p> <p>5 Q Being disorganized, forgetful, are those</p> <p>6 indicators of ADHD?</p> <p>7 A Among others, yes.</p> <p>8 Q Failure to turn in homework that's been</p> <p>9 completed but just forgets to turn it in, is that an</p> <p>10 indicator of ADHD?</p> <p>11 A Could be.</p> <p>12 Q So these are all potential indicators and</p> <p>13 if a child came to you or your clinic with those</p> <p>14 descriptions, would you evaluate for ADHD?</p> <p>15 A Very possibly, yes.</p> <p>16 Q And there are times that people come to</p> <p>17 you or your clinic who have those indicators but the</p> <p>18 school has not done an evaluation; is that correct?</p> <p>19 A There are times, yes.</p> <p>20 Q If a school identifies a child with a</p> <p>21 disability through their own assessment, what is the</p> <p>22 school's obligation?</p>

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<p style="text-align: right;">Page 78</p> <p>1 A Depends on the disability.</p> <p>2 Q So a child has a learning disability.</p> <p>3 What would the school's obligation to that child be?</p> <p>4 A Then they are obligated to put together an</p> <p>5 IEP, individualized education plan, and provide</p> <p>6 appropriate remedial and accommodative</p> <p>7 considerations for that student.</p> <p>8 Q And that could result in services of a</p> <p>9 special education teacher, right?</p> <p>10 A Or in class, yes, either way.</p> <p>11 Q And schools are financially responsible</p> <p>12 for providing those services, I mean they can't say</p> <p>13 gosh, we have already spent our budget on special</p> <p>14 education teachers and the classes are full, you'll</p> <p>15 have to just wait until next year. They can't do</p> <p>16 that, is that correct?</p> <p>17 A Not legally.</p> <p>18 Q Say if a school is already maxed out in</p> <p>19 terms of the services that can be provided to a</p> <p>20 child, it would be hypothetically easier for them to</p> <p>21 say the child does not need the service rather than</p> <p>22 to say the child needs the service but we can't</p>	<p style="text-align: right;">Page 80</p> <p>1 A I do not know.</p> <p>2 Q Let me direct you to P-4. Just so you</p> <p>3 know what it is, it's called the Focus of</p> <p>4 Concern/Screening. You will see at the top it has</p> <p>5 the student's name Stephen, correct?</p> <p>6 A Yes.</p> <p>7 Q Under it sex, race and grade. So he was</p> <p>8 in the 6th grade at the time of this?</p> <p>9 A Yes.</p> <p>10 Q Had you seen this prior to conducting your</p> <p>11 review or as a part of your review of Stephen</p> <p>12 Cockburn's USMLE accommodations application?</p> <p>13 A No.</p> <p>14 Q Have you seen it prior to today?</p> <p>15 A No.</p> <p>16 Q I would like to give you a few minutes to</p> <p>17 take a look at it. Tell you what, I'll maybe direct</p> <p>18 your attention to certain things.</p> <p>19 A Okay.</p> <p>20 Q In the interest of time I am going to try</p> <p>21 to go through it rather quickly, so please stop me</p> <p>22 if I'm going too fast or if you need me to go back</p>
<p style="text-align: right;">Page 79</p> <p>1 provide it?</p> <p>2 A Possible.</p> <p>3 Q And do you think that happens on occasion?</p> <p>4 A Perhaps it does. I think districts who</p> <p>5 have that kind of policy run the risk of ending up</p> <p>6 getting in trouble for doing that. If somebody gets</p> <p>7 an outside evaluation that demonstrates that, those</p> <p>8 are the cases that result in sometimes the district</p> <p>9 having to pay for someone having to go to a private</p> <p>10 school when they have been unable to or unwilling to</p> <p>11 provide appropriate services.</p> <p>12 Q So would you agree that there is a</p> <p>13 financial disincentive for schools to identify</p> <p>14 children with disabilities?</p> <p>15 A It certainly costs more to educate a child</p> <p>16 with disabilities, substantially more, yes.</p> <p>17 Q Do you know anything about the public</p> <p>18 school district, the Wade County Public School</p> <p>19 District in North Carolina --</p> <p>20 A I do not.</p> <p>21 Q -- that Stephen Cockburn attended from</p> <p>22 kindergarten through middle school?</p>	<p style="text-align: right;">Page 81</p> <p>1 and focus on something.</p> <p>2 Here we have section 1. It has numerals</p> <p>3 on the left column there, 1, 2, 3 on this first page</p> <p>4 and it's a parent conference/contact record and the</p> <p>5 first date there is October 5, 1992. Does that look</p> <p>6 accurate?</p> <p>7 A Yes.</p> <p>8 Q So that's the 6th grade year, appears to</p> <p>9 be. Underneath its purpose is to discuss with mom</p> <p>10 Stephen's lack of progress and to offer suggestions</p> <p>11 and ways to improve. And then underneath it says</p> <p>12 comments on conference, the mom felt she could take</p> <p>13 care of the problem. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Would you say that this comment indicates</p> <p>16 that Stephen was struggling at this time of year, as</p> <p>17 of October 5 of the 6th grade year?</p> <p>18 A It would appear so, yes.</p> <p>19 Q Going down under B, Roman numeral I,</p> <p>20 second contact/attempt date December 15, 1993 -- I</p> <p>21 think that should still be 1992 but I would ask you</p> <p>22 to clarify that -- here it says purpose, and this is</p>

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<p style="text-align: right;">Page 82</p> <p>1 handwritten, to discuss with dad Stephen's lack of</p> <p>2 follow-through following the conference with mom.</p> <p>3 Comments on conference. The homework sheet was</p> <p>4 going to be enforced in parens according to the</p> <p>5 parents end of parens. Am I reading this</p> <p>6 accurately?</p> <p>7 A Appears so, yes.</p> <p>8 Q And then under Roman II there was a parent</p> <p>9 notification of screening procedures form sent by</p> <p>10 Joyce Walker and that was January 20, 1993. When we</p> <p>11 talk about a screening procedure, do you know what</p> <p>12 that refers to?</p> <p>13 A Yes, administration of measures that are</p> <p>14 not themselves diagnostic but provide guidance as to</p> <p>15 whether further follow-up appears warranted.</p> <p>16 Q So it's not a formal assessment but it's</p> <p>17 just kind of doing an overview to see do we have a</p> <p>18 problem here that needs to be assessed; is that</p> <p>19 accurate?</p> <p>20 A That's reasonable, yes.</p> <p>21 Q Notice before we go down any further in</p> <p>22 the left column, looks like several more conferences</p>	<p style="text-align: right;">Page 84</p> <p>1 checked were easily distracted, trouble finding</p> <p>2 place, disorganized work habits, careless, doesn't</p> <p>3 complete tasks, contributes to class discussion,</p> <p>4 short attention span, neat appearance, daydreams.</p> <p>5 And down at the bottom additional comments, and this</p> <p>6 is apparently during the observation, Stephen was</p> <p>7 constantly distracted from the class by the artwork</p> <p>8 he was drawing. His assignment was incomplete but</p> <p>9 he did try to complete it while the class did the</p> <p>10 assignment. Is that an accurate reading of that?</p> <p>11 A Yes.</p> <p>12 Q Just looking at this page alone, if you</p> <p>13 had this before you in your private practice or at</p> <p>14 your clinic, at the clinic, what would you recommend</p> <p>15 in terms of an assessment? Would you recommend to</p> <p>16 do an assessment or not?</p> <p>17 A There are certainly several areas of</p> <p>18 concern stated here and that might well be</p> <p>19 sufficient to warrant some follow-up done on this,</p> <p>20 yes.</p> <p>21 Q I mean the things that are here, would it</p> <p>22 raise concern in your mind as an expert in</p>
<p style="text-align: right;">Page 83</p> <p>1 have taken place. Is that accurate?</p> <p>2 A Yes.</p> <p>3 Q Would you agree that probably a minimum of</p> <p>4 three conferences took place? It indicates that we</p> <p>5 have two identified in October and December but we</p> <p>6 don't have any other dates, it just says there were</p> <p>7 more conferences.</p> <p>8 A Yes.</p> <p>9 Q We don't know how many but we know it was</p> <p>10 three or more, correct?</p> <p>11 A Yes.</p> <p>12 Q Under Roman III there is classroom</p> <p>13 observation. This was done by the</p> <p>14 teacher/assistants team. The classes observed were</p> <p>15 PE/health -- I'm not sure, it has learning situation</p> <p>16 and it has class but I don't know what that means.</p> <p>17 Do you have any idea?</p> <p>18 A Just that the entire class was being</p> <p>19 observed. It was not a one on one or a small group</p> <p>20 but that the whole class was present at the time the</p> <p>21 observation was going on.</p> <p>22 Q Under student behaviors, things that were</p>	<p style="text-align: right;">Page 85</p> <p>1 education -- in psychology, would it raise concerns</p> <p>2 in your mind about the possibility of the existence</p> <p>3 of ADHD?</p> <p>4 A It would raise some concerns, yes.</p> <p>5 Q How about any concerns about a learning</p> <p>6 disability?</p> <p>7 A Many kids with learning disabilities</p> <p>8 display some of these things so I guess it's</p> <p>9 conceivable. Not knowing the setting here, PE</p> <p>10 class, it would not seem to be the best place to</p> <p>11 observe a child looking for learning issues.</p> <p>12 Q Certainly. Let's go over to the next</p> <p>13 page. Now we have here screening committee record</p> <p>14 review school history. It has attendance</p> <p>15 patterns -- I am not going to go through all of</p> <p>16 these. Further down it has his grades. Looks like</p> <p>17 there are grades 3, 4 and 5. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Across the top, and it's handwritten</p> <p>20 language, math, science and social studies, and it</p> <p>21 looks like all of those were Cs or better. He has</p> <p>22 one A in language in the 5th grade.</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">Page 86</p> <p>1 A Yes.</p> <p>2 Q 5th grade, looks like it was a pretty good</p> <p>3 year for him, A, B, B, B, correct?</p> <p>4 A Better than the two previous years, yes.</p> <p>5 Q We go down to the next session and in</p> <p>6 small letter A it says instrument used OLS. Do you</p> <p>7 know what that refers to?</p> <p>8 A I do not. There is a group administered</p> <p>9 intelligence test called the Otis-Lennon and it's</p> <p>10 often used as a screening method, so it could stand</p> <p>11 for Otis-Lennon screening but I'm not positive about</p> <p>12 that.</p> <p>13 Q The first date is 2/6/89 I believe.</p> <p>14 A Yes.</p> <p>15 Q Does that look right, February 6, 1989.</p> <p>16 A Yes.</p> <p>17 Q Then it has results. Do you know what SAI</p> <p>18 refers to?</p> <p>19 A No.</p> <p>20 Q Does that look like an SAI to you?</p> <p>21 A It does.</p> <p>22 Q So we don't know what that refers to?</p>	<p style="text-align: right;">Page 88</p> <p>1 A Yes.</p> <p>2 Q And that was 1990. In 1991 it was 48,</p> <p>3 still in the average range, and in '92 it was still</p> <p>4 in the average; correct?</p> <p>5 A All of these scores would appear to be in</p> <p>6 the average range.</p> <p>7 Q So we go down a little bit further and in</p> <p>8 the health screening, there were no health screening</p> <p>9 issues identified there. And the visual, he passed</p> <p>10 for FAR -- visual acuity -- and he passed his</p> <p>11 hearing screening apparently.</p> <p>12 A So they have the eye chart and then they</p> <p>13 would have him do some ear stuff.</p> <p>14 Q So if we go to the next page, here we have</p> <p>15 Roman V, intervention strategies. It identifies the</p> <p>16 areas of concern, lack of organization and lack of</p> <p>17 focused attention. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q If the school was identifying those as</p> <p>20 areas of concern, would that be a trigger in your</p> <p>21 mind to do further assessment of this young man with</p> <p>22 regard to ADHD?</p>
<p style="text-align: right;">Page 87</p> <p>1 A No.</p> <p>2 Q And then over to the right side, small</p> <p>3 letter B, instrument used and it says OLS, 292 and</p> <p>4 the results again 86. Would it be guessing to try</p> <p>5 to figure out what that number refers to?</p> <p>6 A It would be. It could be a standard score</p> <p>7 or it could be a percentile.</p> <p>8 Q So I won't ask you to guess on that.</p> <p>9 Going down to the small letter C, group standardized</p> <p>10 test scores, name of test CAT. Do you know what</p> <p>11 that stands for?</p> <p>12 A I presume California Achievement Test</p> <p>13 which is a group administered test that many schools</p> <p>14 do on an annual basis.</p> <p>15 Q And in parens it does say record</p> <p>16 percentile scores. So the scores that are listed</p> <p>17 below for the various years, 1990, 1991 and 1992,</p> <p>18 would refer to the percentiles; is that correct?</p> <p>19 A Yes.</p> <p>20 Q All right. Then we have 60th percentile</p> <p>21 in reading so that would certainly be in the average</p> <p>22 range; is that accurate?</p>	<p style="text-align: right;">Page 89</p> <p>1 A Could very well, yes. My interpretation</p> <p>2 of this, as I understand it, is they were trying to</p> <p>3 do some environmental modifications over the fall of</p> <p>4 1992.</p> <p>5 Q And you are basing that on what you are</p> <p>6 looking at on the chart, correct?</p> <p>7 A Yes.</p> <p>8 Q The interventions that they tried, rather</p> <p>9 than going through all of them, let me just ask you,</p> <p>10 is there any indication that any of the</p> <p>11 interventions they tried were successful?</p> <p>12 A It appears not. They list 2 as no change,</p> <p>13 praising him and modifying the environment, and then</p> <p>14 3 erratic. That would be with modified instruction,</p> <p>15 peer tutor and change in curriculum. Erratic I</p> <p>16 assume means showed some success at times but at</p> <p>17 other times did not.</p> <p>18 Q The next column over says improvements and</p> <p>19 there is nothing checked there and the next one says</p> <p>20 success and there is nothing checked there. What</p> <p>21 would that indicate to you about how much success he</p> <p>22 experienced with the modified instruction?</p>

23 (Pages 86 to 89)

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<p>1 A That it was spotty at best I would say.</p> <p>2 Q And the modified environment, no change?</p> <p>3 A Right.</p> <p>4 Q Then we go down, apparently he had a peer</p> <p>5 tutor, spotty at best?</p> <p>6 A Um-hmm.</p> <p>7 Q And then the change in curriculum, spotty</p> <p>8 at best, correct?</p> <p>9 A Correct.</p> <p>10 Q If the school says we have a concern, lack</p> <p>11 of focused attention, lack of organization, here are</p> <p>12 the interventions we are going to try, and those</p> <p>13 interventions do not appear to be successful or at</p> <p>14 least spotty at best, what would you recommend to a</p> <p>15 school under those circumstances if they came to you</p> <p>16 and said what should we do next?</p> <p>17 A My conclusion would have been this was not</p> <p>18 particularly successful and that it would probably</p> <p>19 warrant further consideration of the disability.</p> <p>20 Q Okay. If we look down below at the bottom</p> <p>21 there, I have already tried to read the brief</p> <p>22 narrative there. First off, let's just say after</p>	<p>1 Q So he's coming unprepared?</p> <p>2 A Apparently, yes.</p> <p>3 Q And intensity of behavior?</p> <p>4 A Recently -- the first word I don't know --</p> <p>5 Stephen doesn't seem to comprehend what is expected</p> <p>6 but rather has seemingly gotten good at lying about</p> <p>7 what he has forgotten to do. His parents have been</p> <p>8 appalled at some of the excuses he has given us for</p> <p>9 not having his work.</p> <p>10 Q What do you think? Sorry. It's getting</p> <p>11 late. So look at that and again what level of</p> <p>12 concern would you as a diagnostician have looking at</p> <p>13 all this information that we have just reviewed?</p> <p>14 MS. MEW: Object to form. Can you clarify</p> <p>15 which information?</p> <p>16 BY MR. STEEDMAN:</p> <p>17 Q When I say what level of concern, I'll</p> <p>18 give you a scale 1 to 10 to make it easy with 1</p> <p>19 being no concern whatsoever and 10 being very, very</p> <p>20 concerned, so concerned that you want to get this</p> <p>21 done and evaluated immediately. Where would you</p> <p>22 fall?</p>
Page 91	Page 93
<p>1 the use of the above strategies, inappropriate</p> <p>2 behavior still appears to interfere consistently and</p> <p>3 significantly with the student's own learning</p> <p>4 process and they checked off yes.</p> <p>5 A Yes.</p> <p>6 Q And then they ask if yes, please comment</p> <p>7 on the following and then they say duration of</p> <p>8 behavior. Stephen's good intentions of having his</p> <p>9 required assignments, proper --</p> <p>10 A Proper materials, etc.</p> <p>11 Q Thank you.</p> <p>12 A Usually lasts for a day or two.</p> <p>13 Q Oh, you are a teacher. I should have had</p> <p>14 you here before. And then the frequency of</p> <p>15 behavior -- I will let you read this because you are</p> <p>16 better at it than I am.</p> <p>17 A Consistently unresponsive I think.</p> <p>18 Q Does it look like unprepared?</p> <p>19 A Unprepared, yes -- and without the</p> <p>20 necessary tools of --</p> <p>21 Q Learning?</p> <p>22 A -- learning, book, paper, etc.</p>	<p>1 A Can you clarify concern about what?</p> <p>2 Concern that there is ADHD specifically or some</p> <p>3 disability or some issue? Because I think there's</p> <p>4 also some potentially psychological things that seem</p> <p>5 to be suggested by this as well.</p> <p>6 Q Let's start with the ADHD.</p> <p>7 A Based on this I think that there is</p> <p>8 reasonable concern that there are attention problems</p> <p>9 that are interfering.</p> <p>10 Q Okay. And you said possibly psychological</p> <p>11 as well. What psychological problems?</p> <p>12 A Well, just that he seems to be lying to</p> <p>13 his parents and from the first page here that mom</p> <p>14 seems to feel she can handle everything, but yet</p> <p>15 there seems to be a disconnect between mom and</p> <p>16 Stephen.</p> <p>17 Q Okay. So is lying consistent or not</p> <p>18 consistent with what you see in a lot of kids who</p> <p>19 are diagnosed with ADHD?</p> <p>20 A Some become very good excuse makers and</p> <p>21 include lying in their repertory of ways of dealing</p> <p>22 with it.</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 Q Is it more prevalent -- I'll ask you if</p> <p>2 you know -- prevalent for brighter kids who have</p> <p>3 ADHD to lie about or make excuses about their</p> <p>4 failure to do things than kids who are maybe not as</p> <p>5 cognitively gifted?</p> <p>6 A I don't know that I would say that. Could</p> <p>7 be.</p> <p>8 Q In the left column here on this page</p> <p>9 there's the letters IDEA. Do you think that refers</p> <p>10 to the Individuals With Disabilities Education Act?</p> <p>11 A Very possibly.</p> <p>12 Q I'm not sure what that S means, looks like</p> <p>13 an S there under IDEA, then a line and then RTI.</p> <p>14 A Yes.</p> <p>15 Q Would you be guessing to try to figure out</p> <p>16 what they were referring to when they wrote that?</p> <p>17 A It would be entirely speculative but the</p> <p>18 RTI is presumably response to intervention, and with</p> <p>19 the arrow pointing downward next to it they may be</p> <p>20 referring to this having been their intervention</p> <p>21 that he did not respond particularly positively to</p> <p>22 it.</p>	<p style="text-align: right;">Page 96</p> <p>1 counseling and nothing else?</p> <p>2 A As I look at this, I wonder what the</p> <p>3 intent was in making that recommendation. I see a</p> <p>4 fair number of evaluations where a statement like</p> <p>5 this requires substantial reading between the lines</p> <p>6 where often there is a reluctance to put into</p> <p>7 writing concerns about affective issues,</p> <p>8 psychological issues, family stress. So one</p> <p>9 interpretation of this might mean that they thought</p> <p>10 that was really a severe problem and in some way</p> <p>11 superseding these others, but I am also surprised</p> <p>12 that there seems to be no mention of everything else</p> <p>13 that was going on here on this last page.</p> <p>14 Q The next two pages over, the first one is</p> <p>15 audiology referral and a big section of that is cut</p> <p>16 off but I don't think there is anything I really</p> <p>17 want to direct your attention to there. So let's go</p> <p>18 to the page after that. Here we have at the top</p> <p>19 language arts and then math and science, social</p> <p>20 studies and health. It looks like we have some</p> <p>21 feedback here regarding these various classes. Does</p> <p>22 that look like that to you?</p>
<p style="text-align: right;">Page 95</p> <p>1 Q Is RTI something that schools typically</p> <p>2 like to do before they do a full evaluation of a</p> <p>3 child, an IDEA evaluation?</p> <p>4 A These days, yes. It was uncommon I think</p> <p>5 in 1993 but yes.</p> <p>6 Q Are you surprised to see the letters RTI</p> <p>7 here considering this was done in 1993?</p> <p>8 A Yes.</p> <p>9 Q On the next page over it talks about based</p> <p>10 on the information gathered during the screening</p> <p>11 process it was the decision of the committee to --</p> <p>12 and they didn't check off anything there but they</p> <p>13 said they had a conference with the parents,</p> <p>14 Mrs. Miller and Mrs. Hicks maybe suggest --</p> <p>15 A Or Hill.</p> <p>16 Q -- suggest that they may wish to pursue</p> <p>17 family counseling. Is that an accurate rendition of</p> <p>18 what is there?</p> <p>19 A Reading through the typos and</p> <p>20 misspellings, yes.</p> <p>21 Q Is that what you would have recommended on</p> <p>22 the basis of this, just parents go get some family</p>	<p style="text-align: right;">Page 97</p> <p>1 A Yes.</p> <p>2 Q So going through it rather quickly, under</p> <p>3 language arts he was passing his tests but not his</p> <p>4 quizzes, not doing his classwork and not doing his</p> <p>5 homework, correct?</p> <p>6 A Yes.</p> <p>7 Q Often seems to be off task, unprepared and</p> <p>8 daydreaming. I guess the operative or the important</p> <p>9 word there is often. So when you see something like</p> <p>10 that, again that should trigger a concern in your</p> <p>11 mind that maybe there's something else going on,</p> <p>12 whether it's ADHD or maybe even affective disorder?</p> <p>13 A Yes.</p> <p>14 Q Math, passing tests and quizzes, they have</p> <p>15 a bracket there, apparently only a few. He was</p> <p>16 passing and completing classwork, no. Completing</p> <p>17 homework, no. And then the brackets say assignments</p> <p>18 are --</p> <p>19 A Sometimes the wrong assignment.</p> <p>20 Q Comments, off task not prepared. Are</p> <p>21 these kind of comments comments that you would</p> <p>22 typically see in a child with ADHD?</p>

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<p style="text-align: right;">Page 98</p> <p>1 A They are not inconsistent with that, yes.</p> <p>2 Q Science, passing a few tests. He either</p> <p>3 really does well or doesn't do well at all I believe</p> <p>4 that says.</p> <p>5 A Um-hmm.</p> <p>6 Q Passing quizzes, no. completing classwork</p> <p>7 and homework, no. Misplaces assignments, does not</p> <p>8 put name on the paper. Under behavior, not on task,</p> <p>9 daydreams, not prepared, seems lost or confused,</p> <p>10 seems sick or like he doesn't feel well. How</p> <p>11 consistent or inconsistent with that is in children</p> <p>12 who have a diagnosis of ADHD?</p> <p>13 A The latter part, the somatic complaints</p> <p>14 are associated with many different situations, one</p> <p>15 of which would be ADHD.</p> <p>16 Q Social studies, passing tests rarely, only</p> <p>17 one or two a quarter, and same for passing quizzes.</p> <p>18 Completing classwork, no. Completing homework, no.</p> <p>19 Many times assignments may be attempted but -- I</p> <p>20 don't know what that says, done in -- can't make it</p> <p>21 out. Oh, done --</p> <p>22 A In an incorrect manner.</p>	<p style="text-align: right;">Page 100</p> <p>1 taken together -- and I will point out that there</p> <p>2 were several where they talked about his</p> <p>3 daydreaming -- let me see, language, science --</p> <p>4 language arts, science, social studies, okay, those</p> <p>5 three. Once again I get back to the same question.</p> <p>6 Would this indicate to you that he should have been</p> <p>7 evaluated for ADHD at this time?</p> <p>8 A There were certainly indicators of a</p> <p>9 problem here that would have warranted some further</p> <p>10 attention, yes.</p> <p>11 Q In children who suffer from learning</p> <p>12 disabilities who are otherwise bright but are having</p> <p>13 difficulty reading, do they sometimes demonstrate</p> <p>14 these sorts of behaviors?</p> <p>15 A Yes.</p> <p>16 Q I want to go back to your letter once</p> <p>17 again. If you would turn to the fifth page of your</p> <p>18 letter which is marked as 201. On this page near</p> <p>19 the top you note that your review of the diagnostic</p> <p>20 history indicates that the 1998 evaluation did not</p> <p>21 result in any diagnosis being given and thus did not</p> <p>22 warrant such accommodations. You had noted that he</p>
<p style="text-align: right;">Page 99</p> <p>1 Q Thank you. I need to just let you do</p> <p>2 this. And in the comments for behavior are looks</p> <p>3 like not on task daydreaming?</p> <p>4 A Or daydreamer, yes.</p> <p>5 Q And then health, passing tests no, quizzes</p> <p>6 no. Classwork, I have to stay on him and ask for it</p> <p>7 many times. I guess that covers both classwork and</p> <p>8 homework. Behavior comments, could you try to read</p> <p>9 that, please?</p> <p>10 A Not on task, wants to pay attention I</p> <p>11 assume to -- was cut off -- other people, that he's</p> <p>12 overly social perhaps.</p> <p>13 Q Underneath it says reason for referral and</p> <p>14 I know part of that is cut off, but to the extent</p> <p>15 you can read it, if you would try.</p> <p>16 A Stephen isn't meeting success with his</p> <p>17 work. He seems to be much more capable than his</p> <p>18 performance shows. He has a very difficult time</p> <p>19 organizing his work and thoughts.</p> <p>20 Q So the constellation of descriptions of</p> <p>21 his classwork, his homework, his behavior in class,</p> <p>22 his ability to pass tests and quizzes, all of that</p>	<p style="text-align: right;">Page 101</p> <p>1 really wasn't even given a formal diagnosis of a</p> <p>2 reading disorder until he was 24 years old.</p> <p>3 A Yes.</p> <p>4 Q So is it your opinion that he should not</p> <p>5 have received any accommodations or did not qualify</p> <p>6 for any accommodations in high school?</p> <p>7 MS. MEW: Object to form. There are two</p> <p>8 different questions.</p> <p>9 MR. STEEDMAN: I'll restate it.</p> <p>10 BY MR. STEEDMAN:</p> <p>11 Q Is it your opinion that he did not qualify</p> <p>12 for accommodations in high school?</p> <p>13 A Yes, that is my opinion.</p> <p>14 Q Same question with regard to college.</p> <p>15 A Yes.</p> <p>16 Q Same question with regard to medical</p> <p>17 school.</p> <p>18 A Yes.</p> <p>19 Q Same question with regard to the SAT.</p> <p>20 A Yes.</p> <p>21 Q And the MCAT.</p> <p>22 A Yes.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q As you stated earlier, you do review 2 applications for accommodations on the MCAT. Are 3 you aware that he did receive accommodations on the 4 MCAT?</p> <p>5 A I believe once he did, yes.</p> <p>6 Q On the last administration?</p> <p>7 A Yes.</p> <p>8 Q So is it your opinion that he should not 9 have received accommodations on the MCAT?</p> <p>10 A That's correct.</p> <p>11 Q When an individual is given accommodations 12 on the MCAT let's say without having to litigate it, 13 you just apply and accommodations are approved, is 14 that based on somebody doing a review the same as 15 you have done in this situation?</p> <p>16 A Similar, yes.</p> <p>17 Q So basically what we have is a different 18 reviewer who probably -- well, do you know the other 19 reviewers who do reviews for accommodations on the 20 MCAT?</p> <p>21 A Yes, currently, yes. I don't know how 22 many of them -- I understand they had a different</p>	<p style="text-align: right;">Page 104</p> <p>1 there was someone prior to him who had been doing it 2 as well.</p> <p>3 Q But is there any reason for you to believe 4 that there wasn't some sort of review process in 5 place for the applications that were coming in for 6 the MCAT?</p> <p>7 A I don't know that there was not. I mean 8 someone certainly reviewed it. I know that they did 9 not send them out for outside reviews always in the 10 past and I believe at this time they might not have 11 been, so the internal people made decisions then.</p> <p>12 Q So you are not sure when they started to 13 do the outside reviews?</p> <p>14 A I am not.</p> <p>15 Q When did you start doing these --</p> <p>16 A Mid 2006 I think.</p> <p>17 Q Is that when they first started doing the 18 reviews, to your knowledge, or you are not sure?</p> <p>19 A When Dr. Hosterman came on, he sort of 20 implemented the procedure that's being used now and 21 virtually everyone doing it was a new person who 22 hadn't been there before.</p>
<p style="text-align: right;">Page 103</p> <p>1 process at the time accommodations were provided to 2 him for the MCAT but they had a different system in 3 effect at that time.</p> <p>4 Q Plaintiff's Exhibit 9 -- it's the AMCAS 5 application report -- have you seen this previously?</p> <p>6 A Yes.</p> <p>7 Q Just drawing your attention to the MCAT 8 scores that are listed at the bottom --</p> <p>9 A Yes.</p> <p>10 Q -- so we have four dates on which Mr. 11 Cockburn apparently took the MCAT.</p> <p>12 A Yes.</p> <p>13 Q Starting in 2003 and the last one was win 14 2006.</p> <p>15 A Yes.</p> <p>16 Q So when you say there was a different 17 situation, a different way of making a 18 determination, were you referring to 2006?</p> <p>19 A Yes. I believe that John Hosterman, who 20 was the person who brought me on, came in right 21 around that time and there was a period of time when 22 there was no one directing that office and then</p>	<p style="text-align: right;">Page 105</p> <p>1 Q I see.</p> <p>2 A So I would be speculating.</p> <p>3 Q Okay. So you are not sure whether or not 4 there was a referral out for external review of his 5 application for accommodations?</p> <p>6 A That's true. All I can tell you is I know 7 that they did that less in the past than they do 8 now.</p> <p>9 Q So do you know anything about the internal 10 reviewers before they started using external 11 reviewers?</p> <p>12 A There was a woman named Marilyn Height who 13 was doing things for a period of time and I believe 14 she was the one who approved Mr. Cockburn's. She 15 was kind of an interim person in that position and 16 I'm not sure exactly what she did.</p> <p>17 Q Whoever decided that Mr. Cockburn 18 qualified for an accommodation, you obviously 19 disagree with that person's decision?</p> <p>20 A Yes.</p> <p>21 Q But you have no knowledge about how they 22 came in to making that decision?</p>

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<p>1 A I do not.</p> <p>2 Q Are you aware that the NBME has offered</p> <p>3 Mr. Cockburn 50 percent additional time on the USMLE</p> <p>4 step 1?</p> <p>5 A I was not aware of that.</p> <p>6 Q Does that surprise you that they did that?</p> <p>7 A It was not based on my recommendation, so</p> <p>8 in that regard yes. I mean I think they try to be</p> <p>9 accommodating and deal with the information that</p> <p>10 they have. They must have had some reason for doing</p> <p>11 so.</p> <p>12 Q When you make recommendations, do you ever</p> <p>13 find out whether the recommendations are accepted</p> <p>14 and used or just ignored? Do you find out about</p> <p>15 that?</p> <p>16 A Very rarely. I think maybe once or twice</p> <p>17 over the years I have gotten some feedback.</p> <p>18 Q When you get the feedback, is it through</p> <p>19 litigation like this?</p> <p>20 A No. I can recall one time in particular</p> <p>21 where it was sent out to more than one outside</p> <p>22 evaluator and differing opinions came back and I</p>	<p>1 Q Yes.</p> <p>2 A No.</p> <p>3 Q Or middle school or high school?</p> <p>4 A No.</p> <p>5 Q Or how much studying he had to do when he</p> <p>6 was in college?</p> <p>7 A He had indicated that he had to work</p> <p>8 harder than his peers. Beyond that I don't know.</p> <p>9 Q Do you know anything about Mr. Cockburn's</p> <p>10 parents' educational background?</p> <p>11 A I believe his father is an attorney and</p> <p>12 his mother is a minister.</p> <p>13 Q Okay. When students have parents who are</p> <p>14 educated, higher education as his parents, what has</p> <p>15 been your experience with the help that they get</p> <p>16 from their parents?</p> <p>17 A I don't think I could make any blanket</p> <p>18 statement. I see the full spectrum I think. I mean</p> <p>19 many parents are supportive, but many parents also</p> <p>20 just sort of expect their kids to be successful too.</p> <p>21 Q You noted in your letter that Mr. Cockburn</p> <p>22 took some post-baccalaureate classes at UNC to</p>
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<p>1 just got feedback as to what the final outcome was,</p> <p>2 sort of a splitting the difference of the two</p> <p>3 recommendations.</p> <p>4 Q I see. Do you know whether Mr. Cockburn</p> <p>5 received any tutoring when he was in elementary</p> <p>6 school?</p> <p>7 A I do not know that. I don't believe that</p> <p>8 there is any indication that he had that I saw.</p> <p>9 Q How about when he was in high school?</p> <p>10 A He had people helping him in terms of</p> <p>11 taking notes for him and working in study groups and</p> <p>12 tutor groups, yes.</p> <p>13 Q And in high school?</p> <p>14 A I don't recall any formal tutoring.</p> <p>15 Q How about in college?</p> <p>16 A No.</p> <p>17 Q You are saying no, he did not or no --</p> <p>18 A No, I don't believe he did.</p> <p>19 Q Do you have any knowledge about how long</p> <p>20 it took him to do homework when he was in say</p> <p>21 elementary school?</p> <p>22 A Amount of time it took him?</p>	<p>1 prepare for the MCAT. What classes did he take at</p> <p>2 UNC to help him prepare for the MCAT?</p> <p>3 A I did not review a transcript I don't</p> <p>4 believe to see that.</p> <p>5 Q How did you know then that he took classes</p> <p>6 that would help him prepare for the MCAT at UNC?</p> <p>7 A I believe he had stated that.</p> <p>8 Q In terms of his score on the MCAT, do you</p> <p>9 believe that having the extended time helped improve</p> <p>10 his score on the MCAT?</p> <p>11 A It's hard to say. His score certainly</p> <p>12 improved from the three previous administrations.</p> <p>13 The three previous administrations were all within</p> <p>14 about a one-year period. I recall seeing a</p> <p>15 handwritten letter that he wrote to the MCAT in</p> <p>16 which he acknowledged that he had not allocated a</p> <p>17 lot of time in preparation for all of these</p> <p>18 administrations so that makes it difficult to</p> <p>19 compare. I also note that I think 50 percent of the</p> <p>20 improvement that he had from the prior</p> <p>21 administrations were within the biological sciences</p> <p>22 section which I would have expected would have been</p>

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<p style="text-align: right;">Page 110</p> <p>1 less impacted by extended time and perhaps more</p> <p>2 impacted by better preparation, better background</p> <p>3 knowledge.</p> <p>4 Q In the biology section of the MCAT, how</p> <p>5 much reading is required?</p> <p>6 A Well, certainly the problems -- the</p> <p>7 questions are all written problems so reading is</p> <p>8 required but to a lesser extent than -- the share</p> <p>9 amount is less than on the verbal.</p> <p>10 Q How does the MCAT compare to the USMLE</p> <p>11 step 1 in terms of the way the questions are</p> <p>12 presented?</p> <p>13 A Having never taken either, I am relying on</p> <p>14 descriptions of them. I believe at this time the</p> <p>15 MCAT -- the USMLE is a computer-based exam -- the</p> <p>16 MCAT, to my knowledge, was a paper and pencil exam.</p> <p>17 But they both have similar formats in terms of</p> <p>18 series of multiple choice questions and so on. The</p> <p>19 MCAT also has a written piece that does not exist on</p> <p>20 the USMLE on the step 1.</p> <p>21 Q Have you ever seen any of the sample</p> <p>22 questions on the USMLE?</p>	<p style="text-align: right;">Page 112</p> <p>1 first.</p> <p>2 A All right.</p> <p>3 Q So he fell below the 25th percentile on</p> <p>4 reading fluency. Why did that not qualify him as an</p> <p>5 individual with a disability under the ADA?</p> <p>6 A Because that in my opinion was an isolated</p> <p>7 result and that the general trend both at the time</p> <p>8 that the most recent evaluation took place and</p> <p>9 historically was that he had consistently performed</p> <p>10 in the average range on a variety of measures of</p> <p>11 reading dating back to -- well, for example, the</p> <p>12 California Achievement Test scores that we looked at</p> <p>13 in elementary school.</p> <p>14 Q So if someone hypothetically has a verbal</p> <p>15 IQ score of 130 and a performance IQ score of 90 and</p> <p>16 a couple of others in there -- what are they,</p> <p>17 processing speed?</p> <p>18 A Processing speed, working memory.</p> <p>19 Q Are those the four?</p> <p>20 A Yes, currently.</p> <p>21 Q So verbal 130, performance 90, processing</p> <p>22 speed 70, and working memory 80. Can you combine</p>
<p style="text-align: right;">Page 111</p> <p>1 A Just a few.</p> <p>2 Q How were they laid out? I mean was it a</p> <p>3 paragraph followed by several multiple choice</p> <p>4 questions, or was there some other --</p> <p>5 A That's sort of the general format. I mean</p> <p>6 the amount of text I think varies from question to</p> <p>7 question, but the general format is that way.</p> <p>8 Q Have you seen sample questions on the</p> <p>9 MCAT?</p> <p>10 A Yes.</p> <p>11 Q How does that compare?</p> <p>12 A Pretty similar.</p> <p>13 Q You concluded that Stephen Cockburn is not</p> <p>14 disabled under the ADA. Can you tell me what</p> <p>15 standard you relied on to make that conclusion?</p> <p>16 A I was looking for substantial limitation</p> <p>17 in regard to his learning and in comparison to the</p> <p>18 average person. I was using the average person</p> <p>19 criteria there. I am speaking specifically now</p> <p>20 of -- well, speaking of the reading disorder</p> <p>21 diagnosis or the ADHD or both?</p> <p>22 Q Well, let's just do the reading disorder</p>	<p style="text-align: right;">Page 113</p> <p>1 those to come up with a full scale IQ?</p> <p>2 A That score is generally considered</p> <p>3 misleading and should not be used.</p> <p>4 Q Would the same be true of a broad score if</p> <p>5 you have significant differences in the subtest say</p> <p>6 on the Woodcock-Johnson?</p> <p>7 A Sure. When you are creating an average</p> <p>8 based on disparate scores, that average can be</p> <p>9 misleading.</p> <p>10 Q So going back to my example with the WAIS,</p> <p>11 what does it tell you about the individual when we</p> <p>12 have scores that are so disparate, verbal 130,</p> <p>13 performance 80, working memory I think I said 70,</p> <p>14 and -- working memory was 80 and processing speed</p> <p>15 was 70.</p> <p>16 A Yes.</p> <p>17 Q What does that tell us, that scenario?</p> <p>18 A The scenario you describe would be</p> <p>19 somewhat unusual in terms of two deviations above</p> <p>20 the mean and two deviations below the mean. We know</p> <p>21 that doesn't happen very often. Off the top of my</p> <p>22 head, certainly a small percentage, less than 5</p>

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<p style="text-align: right;">Page 114</p> <p>1 percent of the population would show such a result. 2 It's not in and of itself indicative of any 3 disabling condition, but it suggests that -- these 4 tasks are measuring a very broad range of skills and 5 it suggests there is unevenness if you want to call 6 it of the skill set that that person possesses. 7 Q The performance score is in the average 8 range, correct? 9 A In your hypothetical? 10 Q Yes. 11 A Yes. 12 Q And the verbal is above average? 13 A Yes. 14 Q And the other two scores, where would they 15 fall? 16 A Below average. 17 Q So if a psychologist were to combine those 18 scores and come up with the average -- you use a 19 weighted average I believe, right? 20 A Yes. 21 Q And they would come up with an average of 22 that's 95 say, that would not tell us that this is a</p>	<p style="text-align: right;">Page 116</p> <p>1 depositions? 2 A I believe that there is some flat fee but 3 I'm not sure what it is, to tell you the truth. 4 Q How about if this case goes to trial, do 5 you know if it's a flat fee? 6 A I believe it is a flat fee but I don't 7 know what. 8 Q Is it like a daily or per diem? 9 A Yes, daily. 10 Q How many days have you been here for this 11 deposition? 12 A Just today. 13 Q Did you fly in this morning? 14 A Last night. 15 Q I assume NBME has paid your expenses? 16 A Yes. 17 Q And your airfare? 18 A They will reimburse me. I bought the 19 ticket but they will reimburse me. 20 Q Airfare, hotel, meals? 21 A Yes. 22 Q How much money do you think you get from</p>
<p style="text-align: right;">Page 115</p> <p>1 person that has average cognitive ability, would it? 2 A I would not characterize that person's 3 ability as average, yes. 4 Q You would characterize that person as 5 having some very significant strengths and some very 6 significant weaknesses? 7 A Yes. 8 Q How much were you paid to do the review 9 for NBME of Mr. Cockburn's application? 10 A I am paid a consulting fee of \$175 an 11 hour, so it would have been about what, \$800 maybe. 12 Q Are you just multiplying that times the 13 4.5? 14 A In my head, not accurately I'm afraid. 15 Q Your guess is as good as mine. Do you get 16 paid the same amount for participating in this 17 deposition? 18 A I don't know. I assume so. 19 Q Do you have a contract with NBME? 20 A I do. 21 Q Do you know what the contract says with 22 regard to how much you get paid for participating in</p>	<p style="text-align: right;">Page 117</p> <p>1 NBME on an annual basis? 2 A Works out to about 12,000 to 15,000 on an 3 annual basis. 4 Q What percentage of your total income would 5 you say you get from NBME? 6 A Less than 10 percent. 7 Q You said you do have a contract with NBME. 8 Do you recall the terms of that contract with regard 9 to not just the compensation but what the duties and 10 expectations are when you are asked to evaluate or 11 asked to review one of these requests? 12 A Yes, it states that I will review them, 13 provide them with my professional opinion in a 14 written report and in a timely manner and so on. 15 Q Does the contract commit you to 16 participate in a trial if your recommendations are 17 accepted by NBME but are challenged by the 18 individual? 19 A Specifically commit me to it? 20 Q Yes. 21 A I don't know if it states that. 22 Q So your willingness to participate in this</p>

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<p style="text-align: right;">Page 118</p> <p>1 trial is not due to any contractual obligation?</p> <p>2 A That's correct.</p> <p>3 Q So you have been working for NBME since --</p> <p>4 what was the year?</p> <p>5 A '93 -- sorry, 2003.</p> <p>6 Q So seven years?</p> <p>7 A Yes.</p> <p>8 Q Has the annual compensation been pretty</p> <p>9 consistent through those seven years?</p> <p>10 A I think so, yes.</p> <p>11 Q How many times have you been deposed with</p> <p>12 regard to your reviews of NBME applications?</p> <p>13 A Just one.</p> <p>14 Q This is the first one?</p> <p>15 A Yes.</p> <p>16 Q You have never testified in a trial</p> <p>17 regarding accommodations?</p> <p>18 A I have not.</p> <p>19 Q I believe you said that you -- is it 12 to</p> <p>20 15 reviews for NBME per year?</p> <p>21 A On the average, yes.</p> <p>22 Q So over a 7-year period of time you have</p>	<p style="text-align: right;">Page 120</p> <p>1 compares the effect of extended time on an</p> <p>2 individual with a learning disability compared to</p> <p>3 the benefit if somebody does not have a disability</p> <p>4 would receive?</p> <p>5 A There is a growing body of research</p> <p>6 looking at that.</p> <p>7 Q What does that research say?</p> <p>8 A Mixed results depending largely on the</p> <p>9 nature of the test. Without getting into a lengthy</p> <p>10 academic discussion, not all timed tests are equally</p> <p>11 demanding of speed. On tests where most individuals</p> <p>12 don't finish, extended time helps everyone in</p> <p>13 general because it allows you more time to complete</p> <p>14 it. If a test is set up so that most people finish,</p> <p>15 then -- or everyone except for those with a</p> <p>16 disability, then extended time is differentially</p> <p>17 beneficial to the individual with disabilities.</p> <p>18 Q Is there any research that is specific to</p> <p>19 the USMLE step 1?</p> <p>20 A Not that I'm aware of.</p> <p>21 Q How about the MCAT?</p> <p>22 A Not that I'm aware of.</p>
<p style="text-align: right;">Page 119</p> <p>1 probably done around 100?</p> <p>2 A Close to a hundred I would estimate, yes.</p> <p>3 Q So in what percentage of those hundred</p> <p>4 reviews have you concluded that an individual is</p> <p>5 entitled to accommodations of extended time?</p> <p>6 A Specifically with regard to extended time?</p> <p>7 Q Yes.</p> <p>8 A Probably -- this is just an estimate -- I</p> <p>9 would estimate about 25 percent and by 25 percent I</p> <p>10 should qualify not necessarily the extended time</p> <p>11 that was requested but some form of extended time.</p> <p>12 Q Do you know how many requests were made</p> <p>13 for extended time of 100 percent that you have</p> <p>14 reviewed?</p> <p>15 A That tends to be the most common request.</p> <p>16 Q Really?</p> <p>17 A For double time, yes.</p> <p>18 Q What percentage of those have you approved</p> <p>19 for double time?</p> <p>20 A I would say fewer than 25 percent,</p> <p>21 probably in the range of 10 percent or so.</p> <p>22 Q Are you aware of any research that</p>	<p style="text-align: right;">Page 121</p> <p>1 Q SATs?</p> <p>2 A No. It's mostly done with college</p> <p>3 sophomores using contrived sorts of tasks designed</p> <p>4 for research purposes.</p> <p>5 Q I see. Is there any reason that you can</p> <p>6 think of that Mr. Cockburn could not be a successful</p> <p>7 physician if he graduates from medical school?</p> <p>8 A No.</p> <p>9 Q Any reason, based on your review of the</p> <p>10 information that was provided to you to make a</p> <p>11 decision, to make any determination about</p> <p>12 accommodation as well as information you received</p> <p>13 since then, that Mr. Cockburn could not graduate</p> <p>14 from medical school if he passes the USMLEs?</p> <p>15 A No.</p> <p>16 (Deposition Exhibit P-15 was marked for</p> <p>17 identification and was retained by counsel.)</p> <p>18 BY MR. STEEDMAN:</p> <p>19 Q Here is a document we have marked as P-15.</p> <p>20 Can you just identify that document for the record,</p> <p>21 please?</p> <p>22 A This is a letter to Mr. Cockburn dated</p>

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<p style="text-align: right;">Page 122</p> <p>1 December 9, 2009 from Katherine Farmer at the 2 National Board of Medical Examiners. 3 Q Had you seen this letter previously? 4 A No. 5 Q This is your first time seeing it? 6 A Yes. 7 Q This letter is a second denial of Mr. 8 Cockburn's request for accommodations and it seems 9 to rely rather heavily on your review letter. I'll 10 give you a chance to look at it. You don't need to 11 read it in depth. Just when you have had a chance 12 to peruse it, please let me know. 13 A Okay. 14 Q You said this is the first time you have 15 seen this letter. Did Dr. Farmer call you or have 16 any interaction or contact with you whatsoever in 17 connection with this letter before she drafted it? 18 A No. 19 Q Did she indicate at any time to you that 20 she was sending a letter like this to Mr. Cockburn? 21 A No. 22 Q Have you talked to Dr. Farmer in</p>	<p style="text-align: right;">Page 124</p> <p>1 sense justify their moving on to the next stage of 2 their medical education. 3 Q Do you know how the test results are used 4 by medical schools? 5 A All I really know is they are reported to 6 the appropriate medical school and that I think the 7 different schools have different policies with what 8 they do with that. Some of them require students to 9 pass before they move on. They have different -- my 10 understanding is they have different numbers of 11 attempts that students might have to pass it. 12 Q Do you know how Howard Medical School -- 13 A I do not. 14 Q Which of the specific DSM-IV criteria for 15 a reading disorder did Mr. Cockburn not meet? 16 A There are I think two areas. One is in my 17 opinion his reading achievement did not fall below 18 the level that is commensurate with his age, and 19 second I did not see evidence that it was 20 sufficiently impairing his function to warrant a 21 disability. 22 Q Do you believe that Mr. Cockburn is</p>
<p style="text-align: right;">Page 123</p> <p>1 connection with this case at all? 2 A No. 3 Q Dr. Zecker, who are the premier 4 researchers in the field with regard to reading 5 disorders? 6 A Sally Shawitz(ph) at Yale, Richard Olson 7 at University of Colorado, Richard Wagner at Florida 8 State. Cecil Reynolds would be another one, Doris 9 Johnson. 10 Q They are the primary ones then? 11 A Among. 12 Q I am sure there would be other ones. 13 A Prime Balantino would be another one. 14 Q How about in the area of ADHD? 15 A Russell Barclay certainly, Paul Wender, 16 Carl Murphy, Michael Gordon. 17 Q Okay. 18 A It's a large group. 19 Q Yes, I'm sure it is. What is the intended 20 purpose of the USMLE step 1 test? 21 A To have the students demonstrate their 22 sufficient mastery of the material to I guess in a</p>	<p style="text-align: right;">Page 125</p> <p>1 capable of completing the USMLE step 1 under 2 standard conditions? 3 A I don't have any information to suggest 4 that he couldn't, yes. 5 Q How about if he had additional time of say 6 50 percent, do you have any information to make a 7 determination as to whether he could complete the 8 test under those conditions? 9 A I would say no. Certainly he would be 10 able -- anyone would be able to complete at least as 11 much with 50 percent more. 12 Q Do you know of any reason why he could not 13 finish giving the standard conditions to finish the 14 test? 15 A Based on the information I have, I would 16 say no. 17 Q Have you ever met Mr. Cockburn? 18 A Have not. 19 Q Have you ever talked to him on the phone? 20 A No. 21 Q Communicated with him in any fashion? 22 A No.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q How about did you ever observe him taking 2 a test or in the classroom? 3 A No. 4 Q Did you ever talk to any of his teachers? 5 A No. 6 Q Any communications whatsoever with any of 7 his teachers? 8 A No. 9 Q How about his parents, any communications 10 whatsoever with his parents? 11 A No. 12 Q Any communications with anyone at all who 13 knows Mr. Cockburn? 14 A No. 15 Q How helpful is it to you as an evaluator 16 to actually observe someone say in a classroom? Do 17 you ever do that? 18 A I do for cases of ADHD, suspected ADHD, 19 not for a learning disability. I will contact a 20 teacher sometimes, but actual observation I do for 21 ADHD only. 22 Q When you say you contact teachers</p>	<p style="text-align: right;">Page 128</p> <p>1 there was a missed diagnosis back then, more 2 relevant is his current functioning and that not 3 from any of the evidence presented -- and I would 4 include Dr. Filipowski's evaluations as well, the 5 most recent information we had, none of that 6 supported it. 7 Q However, Dr. Culotta disagrees with you on 8 that, correct? Dr. Culotta actually diagnosed Mr. 9 Cockburn with ADHD and inattentive type, correct? 10 A He did. 11 Q Who would you say is in a better situation 12 to evaluate someone for ADHD, an individual who has 13 actually met them, interviewed them, observed them 14 taking tests, or someone who has never met them and 15 never observed them in any situation, who is better 16 situated? 17 A I think that having the opportunity to 18 interact with someone provides you with additional 19 information. Depends on how that information is 20 used I guess. 21 Q But you would never evaluate someone 22 without seeing them yourself, correct?</p>
<p style="text-align: right;">Page 127</p> <p>1 sometimes, are teacher comments and reports, is that 2 useful information in making a diagnosis of learning 3 disability or ADHD? 4 A Often. 5 Q How about parents, parents' reports? 6 A Again, often. 7 Q We went through that 6th grade focus of 8 concern report earlier and you had said that you had 9 not seen that previously. Now that you have had a 10 chance to review it -- and we took some time to go 11 through it -- does it have any impact at all on your 12 opinion with regard to whether Mr. Cockburn might be 13 an individual with a disability? 14 A At the present time? 15 Q Yes. 16 A No. I would say the evidence that was 17 provided by Dr. Culotta regarding Mr. Cockburn -- 18 since this form was really referring to attention 19 issues, does not suggest that at this time or at 20 least as of 2009 he had attention problems, and that 21 we know that cases of childhood ADHD result in adult 22 ADHD in maybe half of all cases. So I think even if</p>	<p style="text-align: right;">Page 129</p> <p>1 A True. 2 Q Yet you think it's appropriate to review a 3 report without ever having laid eyes on someone and 4 come up with a different diagnostic formulation than 5 the individual who actually did meet with the 6 individual, interview them, observe them, you think 7 that's appropriate to do that? 8 A What I am doing I think is different from 9 what the initial evaluator does. I am not -- the 10 purpose of what I do is not to provide a diagnosis 11 but rather to agree or disagree with the 12 interpretation that was provided. 13 Q Is it fair to say that you have no direct 14 knowledge of Stephen Cockburn? 15 A Direct meaning personal knowledge, having 16 ever had an occasion to meet him? True. 17 Q So when you say what you are doing is 18 different, you are not being asked to diagnose 19 someone, you are being asked to review 20 documentation, aren't you still being asked to 21 either confirm or negate a diagnostic formulation? 22 A Yes.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q So how is it different from actually 2 diagnosing someone? 3 A That my opinion matters only to the 4 national board and not to any school or agency that 5 may or may not decide to consider him disabled. 6 Q Do you think that your opinion matters to 7 Mr. Cockburn? 8 A I think that receiving accommodations 9 matters to Mr. Cockburn and therefore my opinion 10 matters to him. 11 Q So in terms of best practices in 12 psychology, is there a requirement that an 13 individual who is providing a diagnosis that they at 14 least see the individual? 15 A I think by requirement, there are no rules 16 for an evaluation. An evaluator is left to his or 17 her own approaches that are consistent with training 18 and what they are best able to do. I think it is 19 certainly desirable to do so. I know of several 20 practitioners who do provide diagnoses for ADHD 21 without seeing the children. I think that that's 22 not good practice.</p>	<p style="text-align: right;">Page 132</p> <p>1 environments including say college admissions? 2 A Can you restate that question? I'm not 3 sure whether you are asking me whether I think that 4 currently students are being discriminated against. 5 Q Sure. Do you believe that colleges do 6 discriminate against individuals with disabilities 7 if they find out someone has a disability and may 8 not admit them as a result of that? 9 A Not to my knowledge. 10 Q What is the most reliable indicator of a 11 reading disorder? 12 A Of a reading disorder? 13 Q Yes. 14 A I don't think there is any single measure 15 that is. I think it is a battery of tools that 16 needs to be used to do that. 17 Q Is that your understanding of what the 18 research says about that? 19 A Sure. 20 Q So if you testify in this case, do you 21 know what areas you will be qualified as an expert 22 in?</p>
<p style="text-align: right;">Page 131</p> <p>1 Q Is there any information that you did not 2 have about Mr. Cockburn that you would have liked to 3 have had in evaluating his request for 4 accommodations? 5 A Well, I would have liked to have seen an 6 evaluation earlier in his academic career. If we 7 are talking about hypotheticals, is there anything 8 that exists that I would have liked to have seen? 9 Not that I'm aware of. 10 Q Would you have liked to have seen that 6th 11 grade areas of concern? 12 A I would have liked to see if that had 13 resulted in an evaluation also, sure. 14 Q Do you believe that people with 15 disabilities are often discriminated against? 16 A Yes. 17 Q In what way? 18 A In a variety of ways. Broadly speaking, 19 people with disabilities are denied access to both 20 physical space and opportunities I think in 21 countless ways. 22 Q Would that apply in a variety of</p>	<p style="text-align: right;">Page 133</p> <p>1 A I would presume I would be qualified as an 2 expert -- considered an expert in learning 3 disabilities and ADHD. 4 Q And you have never testified in court 5 previously; is that correct? 6 A Not related to anything having to do with 7 disabilities. 8 Q Have you ever testified as an expert in 9 any field in court? 10 A I was an expert witness in -- a witness to 11 a traffic accident once. 12 Q Okay. 13 A And I had testified in an attempt to 14 revoke the franchise of a transmission dealer. 15 Q Did he have a learning disability? How 16 did you go about preparing for this deposition? 17 A I reviewed -- I was sent a package of 18 materials and reviewed them. I spent probably a 19 total of three or four hours refreshing my memory on 20 everything, going over everything again. 21 Q Did you talk with anyone? 22 A Yes, I spoke briefly to Bob Burgoyne this</p>

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<p style="text-align: right;">Page 134</p> <p>1 morning and then we talked -- was it yesterday?</p> <p>2 MS. MEW: I can't testify.</p> <p>3 THE WITNESS: Yes, I believe we talked</p> <p>4 yesterday and once prior to that as well last week I</p> <p>5 guess it was.</p> <p>6 BY MR. STEEDMAN:</p> <p>7 Q You talked with Mr. Burgoyne this morning?</p> <p>8 A Yes, this morning.</p> <p>9 Q Did you speak with Ms. Mew at any time?</p> <p>10 A Yesterday and about a week ago.</p> <p>11 Q About how much time did you spend talking</p> <p>12 to Ms. Mew?</p> <p>13 A Probably an hour and a half total, I think</p> <p>14 probably about an half hour yesterday and an hour</p> <p>15 previously.</p> <p>16 Q Anyone else you spoke to?</p> <p>17 A Shelley Green from the National Board was</p> <p>18 in on the call yesterday as well.</p> <p>19 Q What is her position?</p> <p>20 A She is head counsel for the national</p> <p>21 board. That's not the right title but something</p> <p>22 like that.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q And anything else in all of the materials</p> <p>2 that you reviewed that would support a diagnosis of</p> <p>3 ADHD?</p> <p>4 A A current diagnosis of ADHD?</p> <p>5 Q Yes.</p> <p>6 A No.</p> <p>7 Q Any possibility that you are wrong?</p> <p>8 A The diagnostic process is always running</p> <p>9 the risk of making an error, so sure, nobody is</p> <p>10 infallible.</p> <p>11 Q And it's fairly subjective, wouldn't you</p> <p>12 agree?</p> <p>13 A There is a subjective component to it,</p> <p>14 absolutely. That's why it's important to gather as</p> <p>15 much information as you can to try to be able to</p> <p>16 make decisions that are supported.</p> <p>17 Q Would you feel more confident about your</p> <p>18 opinion if you had actually evaluated Mr. Cockburn</p> <p>19 yourself?</p> <p>20 A If I would have evaluated him, I probably</p> <p>21 would have done things differently. I would have</p> <p>22 administered different tests and probably more</p>
<p style="text-align: right;">Page 135</p> <p>1 Q Okay. In all of the assessments you have</p> <p>2 read in both Dr. Filipowski's assessments and Dr.</p> <p>3 Culotta's assessment, anything in there, any</p> <p>4 findings in there that could support a finding of a</p> <p>5 reading disorder?</p> <p>6 A There are some low scores in the reading</p> <p>7 fluency measure of the Woodcock-Johnson which if</p> <p>8 supported by other good measures of reading might</p> <p>9 have provided more compelling evidence for a reading</p> <p>10 disability.</p> <p>11 Q So what other supports are you referring</p> <p>12 to? Supported by other evidence of a reading</p> <p>13 problem? What are you referring to?</p> <p>14 A Well, both standardized tests and other</p> <p>15 evidence of an impairment that impacts his reading.</p> <p>16 Q So if he had had hypothetically standard</p> <p>17 scores that were below the 25th percentile in say</p> <p>18 the other subtests test that comprised the broad</p> <p>19 reading cluster, would that have suggested to you</p> <p>20 that he has a learning disability in reading?</p> <p>21 A It would certainly have been strong</p> <p>22 evidence, yes.</p>	<p style="text-align: right;">Page 137</p> <p>1 tests. So yes.</p> <p>2 Q Other than the e-mail that you received</p> <p>3 from Dr. Farmer informing you that Mr. Cockburn's</p> <p>4 materials were available for your review and the</p> <p>5 communications you have had with the attorneys</p> <p>6 representing NBME, has there been any other</p> <p>7 communication between you and any other</p> <p>8 representatives of the NBME?</p> <p>9 A No.</p> <p>10 Q Is it possible in your opinion for someone</p> <p>11 to be substantially limited in learning as compared</p> <p>12 to most people and graduate from high school?</p> <p>13 A Depends on the high school. I think so.</p> <p>14 Q How about college?</p> <p>15 A Less likely but I think it's -- there are</p> <p>16 some colleges where probably one could select a</p> <p>17 major and not be very successful but be successful</p> <p>18 enough to make it through school.</p> <p>19 Q How about medical school?</p> <p>20 A I think that would be very difficult to</p> <p>21 do.</p> <p>22 Q Do you think it's possible or not</p>

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<p style="text-align: right;">Page 138</p> <p>1 possible?</p> <p>2 A I would say no.</p> <p>3 Q Does the fact that Mr. Cockburn graduated</p> <p>4 from high school, graduated from college, and has</p> <p>5 been able to pass his first two years of medical</p> <p>6 school, is that a factor in your determining that he</p> <p>7 is not an individual with substantial disability in</p> <p>8 learning?</p> <p>9 A It's not just the fact that he has done</p> <p>10 that, it's how he did it I think, that he was</p> <p>11 successful in doing so.</p> <p>12 Q Could you expand on that because I'm not</p> <p>13 sure I understand that answer?</p> <p>14 A Well, he had a very strong grade point</p> <p>15 average in college for example, I believe</p> <p>16 approximately a 3.5 average, which certainly is not</p> <p>17 eking out success. So that kind of level of success</p> <p>18 I think is relevant.</p> <p>19 Q Now in order for someone to be diagnosed</p> <p>20 with a learning disability in your opinion, they</p> <p>21 have to have a substantial limitation in comparison</p> <p>22 to other people, correct?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q How many of those conferences have you</p> <p>2 attended?</p> <p>3 A Probably five.</p> <p>4 Q Five. What is the focus of those</p> <p>5 conferences?</p> <p>6 A I think a couple of reasons that they do</p> <p>7 that. One is just to provide us with updates in</p> <p>8 terms of the number of requests that they have</p> <p>9 received and so on. Also to introduce new</p> <p>10 consultants who are being added. But the primary</p> <p>11 reason, the primary benefit is that the various</p> <p>12 consultants will present to the rest of the group</p> <p>13 information that's relevant to what we do. So we'll</p> <p>14 have presentations. We had an optometrist last year</p> <p>15 who talked about a particular disorder convergence</p> <p>16 insufficiency and its relation to learning. We</p> <p>17 talked about malingering. So it's a group</p> <p>18 discussion of issues that are relevant to our</p> <p>19 reviews.</p> <p>20 Q You say you talked about malingering?</p> <p>21 A That was a topic either the last year or</p> <p>22 the year before.</p>
<p style="text-align: right;">Page 139</p> <p>1 A Yes.</p> <p>2 Q Or I should say most people, correct?</p> <p>3 A Yes.</p> <p>4 Q So in light of your statement that</p> <p>5 somebody who is substantially limited in learning</p> <p>6 would not be able to graduate from medical school,</p> <p>7 is it your opinion that medical school should not</p> <p>8 accept people who have learning disabilities?</p> <p>9 A Not if they are properly accommodated, I</p> <p>10 think they can be successful. I was assuming you</p> <p>11 were referring in your previous questions to someone</p> <p>12 who had these disabilities and was not being</p> <p>13 identified and accommodated.</p> <p>14 Q I see. Okay. So with accommodations,</p> <p>15 those individuals --</p> <p>16 A That's different.</p> <p>17 Q -- could be successful?</p> <p>18 A Yes. Sorry.</p> <p>19 Q Now the NBME's consultants conference you</p> <p>20 attended on an annual basis, correct?</p> <p>21 A We are not meeting this year but we have</p> <p>22 met annually.</p>	<p style="text-align: right;">Page 141</p> <p>1 Q Do you recall who -- not the name but the</p> <p>2 qualifications or profession of the person --</p> <p>3 A It was Larry Lewandowski of Syracuse who</p> <p>4 has conducted a fairly large amount of research in</p> <p>5 the area and was presenting some of his work.</p> <p>6 Q For the record, could you define</p> <p>7 malingering?</p> <p>8 A Malingering is intentionally performing</p> <p>9 poorly on tests as a means of misrepresenting your</p> <p>10 actual status.</p> <p>11 Q Did Mr. Lewandowski give you an idea of</p> <p>12 how frequently that occurs?</p> <p>13 A No. That was part of the discussion that</p> <p>14 we don't know how often it occurs and that there</p> <p>15 aren't very good tests out there for detecting it.</p> <p>16 That was the primary discussion, what tools are</p> <p>17 available to do that.</p> <p>18 Q Is there any indication in any of the</p> <p>19 information that you have read about Mr. Cockburn</p> <p>20 that would indicate that he has engaged in</p> <p>21 malingering?</p> <p>22 A I don't believe so, no.</p>

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<p style="text-align: right;">Page 142</p> <p>1 Q And Larry Lewandowski, what is he? Is he</p> <p>2 a psychologist?</p> <p>3 A He has a Ph.D. in learning disabilities I</p> <p>4 believe.</p> <p>5 Q So did he present for the entire day?</p> <p>6 A Maybe a half hour presentation followed by</p> <p>7 a discussion of maybe a half hour, 45 minutes.</p> <p>8 Q When you have this discussion, who engages</p> <p>9 in the discussion? Is it audience discussion?</p> <p>10 A Sure. It tends to be more the individuals</p> <p>11 for whom malingering is more relevant. There are</p> <p>12 experts in all areas. Someone who works in hearing</p> <p>13 impairment isn't going to be a particularly</p> <p>14 interested contributor to that discussion.</p> <p>15 Q Who would be the experts who would be most</p> <p>16 interested in malingering?</p> <p>17 A Those primarily in ADHD and learning</p> <p>18 disabilities and to a lesser extent psychiatric</p> <p>19 disorders.</p> <p>20 Q So is there an underlying suspicion that</p> <p>21 anybody who claims to be learning disabled or ADHD,</p> <p>22 that they may be also malingering?</p>	<p style="text-align: right;">Page 144</p> <p>1 read.</p> <p>2 (Signature not having been waived, the</p> <p>3 deposition of STEVEN ZECKER was concluded at 4:15</p> <p>4 p.m.)</p> <p>5 * * *</p> <p>6</p> <p>7</p> <p>8 ACKNOWLEDGMENT OF DEPONENT</p> <p>9 I, STEVEN ZECKER, do hereby acknowledge I</p> <p>10 have read and examined the foregoing testimony, and</p> <p>11 the same is a true, correct and complete</p> <p>12 transcription of the testimony given by me, and any</p> <p>13 corrections appear in the attached errata sheet</p> <p>14 signed by me.</p> <p>15</p> <p>16 _____</p> <p>17 Date STEVEN ZECKER</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 143</p> <p>1 A I always like to see in an evaluation that</p> <p>2 malingering was considered if not tested more.</p> <p>3 There are brief tests that can put that to rest</p> <p>4 which are unfortunately rarely administered.</p> <p>5 Q Were any of those tests administered to</p> <p>6 Mr. Cockburn?</p> <p>7 A No.</p> <p>8 Q So did that raise any concerns for you?</p> <p>9 A Not really, no.</p> <p>10 Q But you did say you would like to see them</p> <p>11 administered?</p> <p>12 A Yes, I'd like to see them -- this is not</p> <p>13 relevant to Mr. Cockburn's case but I have reviewed</p> <p>14 a number of cases who like Mr. Cockburn has multiple</p> <p>15 evaluations for a period of time and performance</p> <p>16 appears to dramatically worsen as the individual</p> <p>17 gets older, and when you see the same test with a</p> <p>18 much different and much lower result, that raises</p> <p>19 suspicions for example.</p> <p>20 MR. STEEDMAN: I think that's all I have.</p> <p>21 MS. MEW: Wait a minute. Let me see if I</p> <p>22 have anything. No cross. The witness is going to</p>	<p style="text-align: right;">Page 145</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2 I, Marilyn J. Feldman, Registered Professional</p> <p>3 Reporter, the officer before whom the foregoing</p> <p>4 proceedings were taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record of</p> <p>6 the proceedings; that said proceedings were taken by</p> <p>7 me stenographically and thereafter reduced to</p> <p>8 computerized transcription under my supervision; and</p> <p>9 that I am neither counsel for, related to, nor</p> <p>10 employed by any of the parties to this case and have</p> <p>11 no interest, financial or otherwise, in its outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>13 and affixed my notarial seal this 23rd day of</p> <p>14 December 2010.</p> <p>15 My commission expires:</p> <p>16 December 14, 2011</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 NOTARY PUBLIC IN AND FOR</p> <p>21 THE DISTRICT OF COLUMBIA</p> <p>22</p>

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